

**Shelby County
Board of Zoning Appeals**

June 13, 2023 at 7:00 PM

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MEETING AGENDA

Shelby County Board of Zoning Appeals June 13, 2023, 7:00 P.M.

CALL TO ORDER

ROLL CALL

APPROVAL OF MINUTES

Minutes from the May 9, 2023 meeting.

OLD BUSINESS

BZA 23-04 – DOUGLAS C HUNT: USE & DEVELOPMENT STANDARDS VARIANCES. Located at 1796 W Washington Ave, Shelbyville, Addison Township.

NEW BUSINESS

BZA 23-24 – WALDRON GENERAL: DEVELOPMENT STANDARDS VARIANCE. Located at 110 W Washington St, Waldron, Liberty Township.

BZA 23-22 – MARK LEE: DEVELOPMENT STANDARDS VARIANCES. Located at 5815 W PR 874 S, Edinburgh, Jackson Township.

BZA 23-23 – MIKE & LAURA BURTON: DEVELOPMENT STANDARDS VARIANCES. Located south of and adjoining 7354 S Edinburgh Rd, Edinburgh, Jackson Township.

V23-03 – FRANK JR. & LAUREN A. WOODS: ZONING VIOLATION. Located at 4842 N Brandywine Rd., Shelbyville, Brandywine Township.

ADOPTION OF BZA RULES OF PROCEDURE

DISCUSSION

APPROVED HEARING OFFICER CASES

BZA 23-17 – SCI FAIRLAND LLC: DEVELOPMENT STANDARDS VARIANCES. Located at 385 W Carey St, Fairland, Brandywine Township. *Approved May 24, 2023.*

BZA 23-18 – JASON ROWE: DEVELOPMENT STANDARDS VARIANCE. Located at 456 W 1000 S, Flat Rock, Washington Township. *Approved May 24, 2023.*

BZA 23-19 – SHELBY COUNTY BOARD OF COMMISSIONERS: DEVELOPMENT STANDARDS VARIANCE. Located at 1304 N Michigan Rd, Shelbyville, Addison Township. *Approved May 24, 2023.*

BZA 23-20 – HELANA AGRI: DEVELOPMENT STANDARDS VARIANCE. Located at 2668 S 275 W,

Shelbyville, Shelby Township. *Approved June 6, 2023.*

BZA 23-21 – BRADLEY MCCARTY: DEVELOPMENT STANDARDS VARIANCE. Located at 7516 W Old SR 252, Edinburgh, Jackson Township. *Approved May 30, 2023.*

VIOLATION UPDATES

ADJOURNMENT

The next regular meeting of the Shelby County Board of Zoning Appeals is scheduled for Tuesday, **July 25, 2023 at 7:00 PM.**

Property Details

Location: 1796 W Washington Ave,
Shelbyville, Addison Township.

Property Size: 22.01-acres.

Current Land Use: Commerical.

Zoning Classification:

I2 (High-Intensity Industrial)

Intent: This district is established for high intensity industrial uses and heavy manufacturing facilities.

Development Standards: Enact quality time, place, and manner development standards to minimize impacts on adjacent properties while encouraging economic vitality. Minimize light, noise, water, and air pollution.

BZA: Be sensitive to the potential for light pollution, noise pollution, loading berth placement, pedestrian safety, and vehicular safety.

Future Land Use per Comp Plan

Shelbyville Incorporated Planning Area
Single-Family Residential

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

Shelbyville Incorporated Planning Area
Conservation

Areas of conservation identified in the Future Land Use Map are primarily located within the floodway and natural watershed areas. These areas should be protected from development. These areas could also be utilized as lineal parks to connect the built environment with nature. These areas also serve as educational catalysts to engage people with the natural environment.

Surrounding Development

	Zoning	Land Use
North	A1	Woodland
South	A1 / RE	Estate Residential
East	A1	Woodland
West	A1	Woodland

Staff Report

Case Number: BZA 23-04

Case Name: Douglas C Hunt – Use & Development
Standards Variances

Request

Variance of Use to allow for an automobile-oriented business (automobile salvage and repair) in the I2 (High Intensity Industrial) District.

Variations of Development Standards to allow:

1. Use of the existing gravel driveway (hard surface required);
2. Use of existing gravel parking and maneuvering areas (hard surface required);
3. Lack of dedicated ADA parking spaces;
4. Use of existing parking area encroaching more than 50% into the front yard setback;
5. Unscreened outdoor storage of vehicles and equipment (6-foot-tall privacy fence and landscaping between outdoor storage area and street required).

Code Requirement

UDO Section 2.35 – I2 District Intent, Permitted Uses, and Special Exception Uses

UDO Section 5.20 C – Materials: All driveways shall consist of asphalt, concrete or other non-porous material approved by the Zoning Administrator.

UDO Section 5.60 A – Surface: All ingress/egress onto a driveway or parking area and required parking lots shall utilize a paved surface of concrete, asphalt, brick pavers, or the like. Gravel, stone, rock, dirt, sand, or grass shall not be permitted as parking surfaces, except the A4 zoning district which may use gravel. Parking of vehicles shall not be permitted on lawns or other pervious-surfaced areas of a lot.

UDO Section 5.60 F 1 – Applicable Codes: Accessible parking spaces shall be provided per the specifications of the Americans with Disabilities Act (ADA), the Fair Housing Act (FHA), and the Indiana Building Code (IBC).

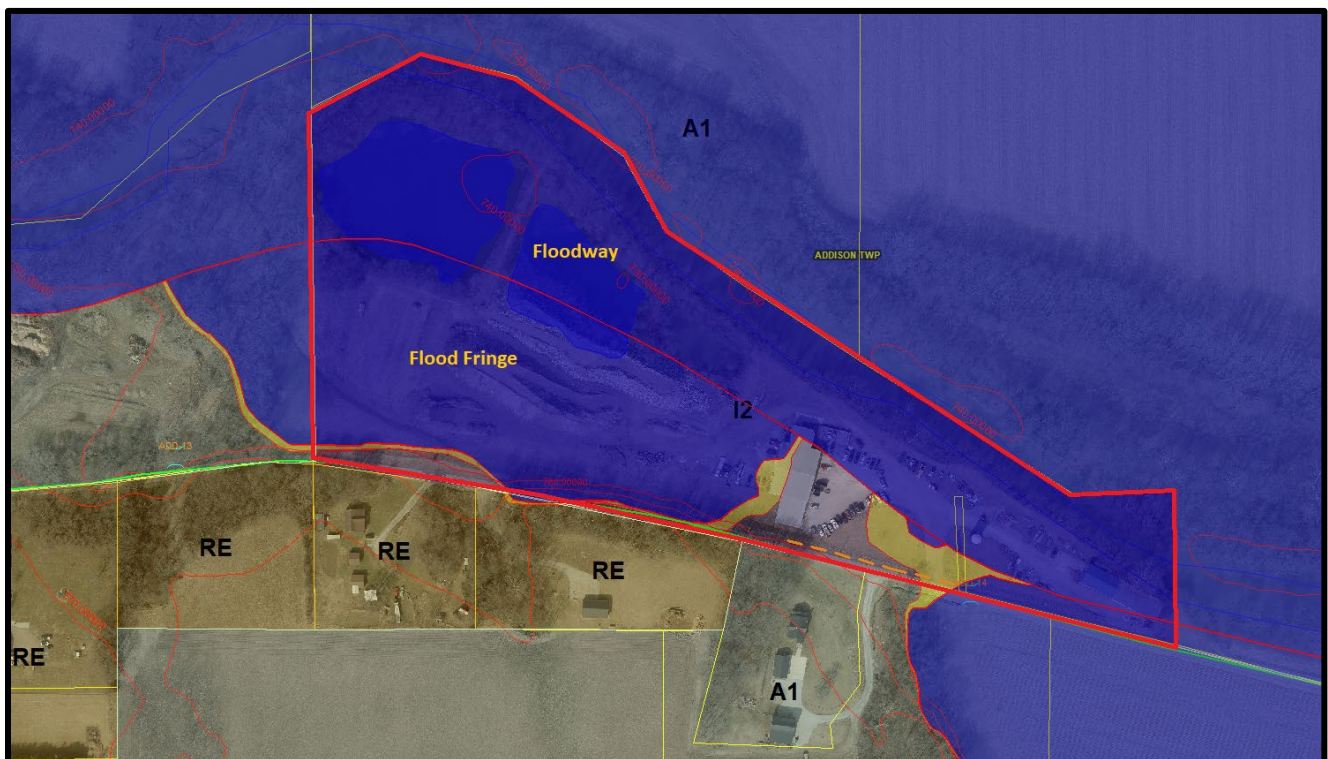
UDO Section 5.63 A 1 a – *Front, Side, and Rear: Parking lots may project into the front, side, and rear yard setback by fifty percent (50%) of the minimum front, side, or rear yard setback.*

UDO Section 5.59 A – *Industrial Outdoor Storage: When adjacent to a public street, outdoor storage of vehicles, equipment, product, supplies, materials, waste or scrap, pallets, and the like shall be effectively screened on all sides with a minimum six (6) foot privacy or security fence, at least ten (10) feet from the property line. The ten (10) foot area immediately outside the fence shall be landscaped with trees (one per fifty (50) lineal feet of fence) and shrubs (one per thirty (30) lineal feet of fence).*

Purpose of Requirements:

- Paved commercial driveways prevent migration of dust onto the public road from use of a gravel driveway by multiple vehicles.
- Paved parking areas eliminate potential nuisances such as dust and noise caused by the movement of vehicles on gravel or dirt parking areas. Paved parking areas can also have defined parking spaces and drive aisles, allowing for safe and efficient movement of vehicles.
- Standards for parking for the disabled ensures that parking lots for commercial development comply with the Americans with Disabilities Act and state codes.
- Parking lot setback requirements limit conflicts between vehicles using parking lots and the public road and allows for greenspace between parking lots and the road to enhance property aesthetics.
- Screening of outdoor storage areas protects the aesthetic quality of the area.

Property Map





2023 Google Aerial

Case Description

- The petitioner currently leases the 10,244 sq. ft. commercial building located on the property to a company that repairs and rebuilds vehicles intended for sale at an off-site car lot.
- The company stores vehicles outdoors in the gravel area surrounding the building. During a site visit, Staff counted approximately forty vehicles on-site.
- The UDO only permits automobile-oriented uses in the C2 (Highway Commercial) District and does not permit outdoor storage related to automobile-oriented uses. However, automobile-oriented uses pose less aesthetic, noise, and environmental impacts to adjacent properties and the community than most uses permitted in the I2 District.
- The company does not intend to make any improvements to the site. Per Section 5.01 of the UDO, any land use change that occurs after the effective date of the UDO is subject to all development standards and regulations for the applicable zoning district. The site does not currently comply with all development standards of the I2 District; therefore, the petitioner must obtain applicable development standards variances to use the site in its current condition.
- The portion of the property used for outdoor storage of vehicles lies within the Federal Emergency Management Agency (FEMA) Special Flood Hazard Area Zone AE (map # 18145C0118C effective on 11/05/2014) Floodway & Flood Fringe. State Code and County Ordinance do not prohibit storage of vehicles in the floodplain.

- Historically, the property has included high-intensity industrial uses such as waste processing and landfill.
- The property lies within the City of Shelbyville’s incorporated planning area and the Shelbyville Planning Department has reviewed the variance requests (see attached email). City Staff generally does not object to the variance requests, however, recommends screening and/or liming the size of the outdoor storage area due to the City Comprehensive Plan recommendation of residential development for the surrounding area.
- Use variances expire at the time the property changes ownership.

Staff Analysis of Findings of Fact

Use Variance

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

Staff Analysis: Use of the property for an automobile-oriented business would pose less of an impact to the public than most uses permitted in the I2 District or the historical use of the property.

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: Use of the property for an automobile-oriented business would pose less of an impact to surrounding properties than most uses permitted in the I2 District or the historical use of the property.

3. State Requirement: The need for the variance arises from some condition peculiar to the property involved.

Staff Analysis: The property has historically accommodated more intense uses than automobile salvage and repair.

4. State Requirement: The strict application of the terms of the Zoning Ordinance will constitute an unnecessary hardship if applied to the property for which variance is sought.

Staff Analysis: A strict application of the ordinance would not allow for less intense use of the property than most uses permitted in the I2 District or the historical use of the property.

5. State Requirement: The approval does not interfere substantially with the Comprehensive Plan.

Staff Analysis: The City of Shelbyville generally does not object to the variance, however, recommends screening and/or liming the size of the outdoor storage area due to the City Comprehensive Plan recommendation of residential development for the surrounding area.

Development Standards Variances

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

Staff Analysis: The property has historically accommodated more intense uses in its current condition. However, limiting the number of vehicles stored outdoors would ensure that the aesthetics of the site and potential environmental impacts associated with vehicles in disrepair do not exceed aesthetic and environmental impacts associated with historical use of the property.

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 property has historically accommodated more intense uses in its current condition. However, limiting the number of vehicles stored outdoors would ensure that the aesthetics of the site and potential environmental impacts associated with vehicles in disrepair do not exceed aesthetic and environmental impacts associated with historical use of 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: A strict application of the ordinance would not allow for more intense use of the property than historical uses that the property has accommodated in its current condition.

Staff Recommendation

APPROVAL because the I2 District allows more intense uses than automobile salvage and repair, and the property has historically accommodated more intense uses in its current condition. However, limiting the number of vehicles stored outdoors would ensure that the aesthetics of the site and potential environmental impacts associated with vehicles in disrepair do not exceed aesthetic and environmental impacts associated with historical use of the property.

Recommended Stipulation: No more than forty (40) vehicles (including inoperable, operable, employee, visitor, and personal vehicles) shall be present outdoors on site at any one time. The definition of vehicle shall be any passenger vehicle, truck, tractor, tractor-trailer, truck-trailer, trailer, boat, recreational vehicle, semitrailer, or any other vehicle propelled or drawn by mechanical power.

Applicant/Owner Information

Applicant:	Douglas L Hunt 2987 S 150 E Shelbyville, IN 46176	Owner:	Hunt & Hunt LLC PO Box 66 Shelbyville, IN 46176
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From: [Adam Rude](#)
To: [Desiree Calderella](#)
Cc: [Allan Henderson](#)
Subject: Re: 1797 W Washington Ave. - Recommendation in Incorporated Planning Area
Date: Monday, May 1, 2023 8:57:22 AM

Hey Desiree! Sorry, I started to type a response last week and then got distracted and forgot to come back to this.

The property has historically been Industrial, so the use doesn't give us too much concern, and the floodplain will help limit the scale of the use from expanding too far across the property. The one area where we could have some concern is the screening requirements being completely waived. The comp plan show a future section of Tom Hession/Progress Pkwy crossing the river in this area, and the south side of the river is being shown as Single Family Residential, while there are few neighbors to the south right now, I think that could change as the City continues to develop west and eventually (maybe in my lifetime) crosses the river with this road. If the board moves forward with granting some type of variance on this standard, maybe they could just grant a partial relief, and/or limit the outdoor storage area's overall size. The rest of the Development Standards Variances seem reasonable and I don't think we would have much concern with these approvals.

Thanks and sorry again for the delay,
Adam



Adam Rude, AICP
Director, Planning and Building Department

T: 317-392-5102 x 306 | M: 317-512-0090

E: arude@cityofshelbyvillein.com | W: www.cityofshelbyvillein.com

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

On Mon, May 1, 2023 at 8:47 AM Desiree Calderella <dcalderella@co.shelby.in.us> wrote:

I really need an answer on this today as I will be on vacation the rest of the week. Thanks!

Desiree Calderella, AICP

Planning Director

Shelby County Plan Commission / Building Inspector

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

STATEMENT OF INTENT (ONLY REQUIRED FOR VARAINCE OF USE & SPECIAL EXCEPTION)

Please answer the following questions (when applicable) pertaining to your request. If approved, the use would be limited to the information provided and expansion of the use would require new approval from the Board. The Board may also approve the use conditional on one or more amendments to the statement of intent.

1. Summary of Proposed Use and/or Business Activity: Auto Repair and Rebuild

2. Days & Hours of Operation: 7:00 AM - 7:00 PM

3. Maximum Number of Customers per Day/Week/Month: 10

4. Type and Frequency of Deliveries: Daily

5. Description of any Outdoor Storage: Cars awaiting Repair

6. Description, Size, and Placement of any Signage: None

7. Description of Waste Disposal: N/A

8. Existing and/or Proposed Building and Site Improvements Pertaining to Proposed Use (ex. parking lot, landscaping, commercial upgrades to building, etc.): Roof on Building
Soon

**USE VARIANCE
FINDINGS OF FACT**

Applicant: _____

Case #: _____

Location: _____

The Shelby County Board of Zoning Appeals must determine that the following criteria have been met in order to approve an application for a Use Variance. Using the lines provided, please explain how your request meets each of these criteria.

1. **General Welfare:** The approval will not be injurious to the public health, safety, and general welfare of the community.

No

2. **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.

Will not Effect other Property

3. **Practical Difficulty:** The need for the variance arises from some condition particular to the property involved.

No

4. **Unnecessary Hardship:** The strict application of the terms of the Shelby County Unified Development Ordinance will constitute an unnecessary hardship as they are applied to the property for which the variance is sought.

No

5. **Comprehensive Plan:** The granting of the variance does not interfere substantially with the Comprehensive Plan.

No

Property Details

Location: 110 W Washington St,
 Waldron, Liberty Township.

Property Size: 0.19-acres.

Current Land Use: Commerical.

Zoning Classification:

VM (Village Mixed Use)

***Intent:** This district is established for the mixed-use developments currently within small towns to allow them to be expanded into rural town centers that may offer a variety of housing, commercial and institutional amenities.*

***Development Standards:** Pedestrian friendly development standards to help create rural town centers.*

Future Land Use per Comp Plan

Suburban Residential

This purpose of this category is for the transition of land use from agricultural and estate residential uses to low to medium-density, single-family residential subdivisions as water and sewer facilities become available.

	Zoning	Land Use
North	VM	Commerical
South	VM	Commerical
East	VM	Commerical
West	VM	Commerical

Staff Report

Case Number: BZA 23-24
Case Name: Waldron General – Development Standards Variance

Request

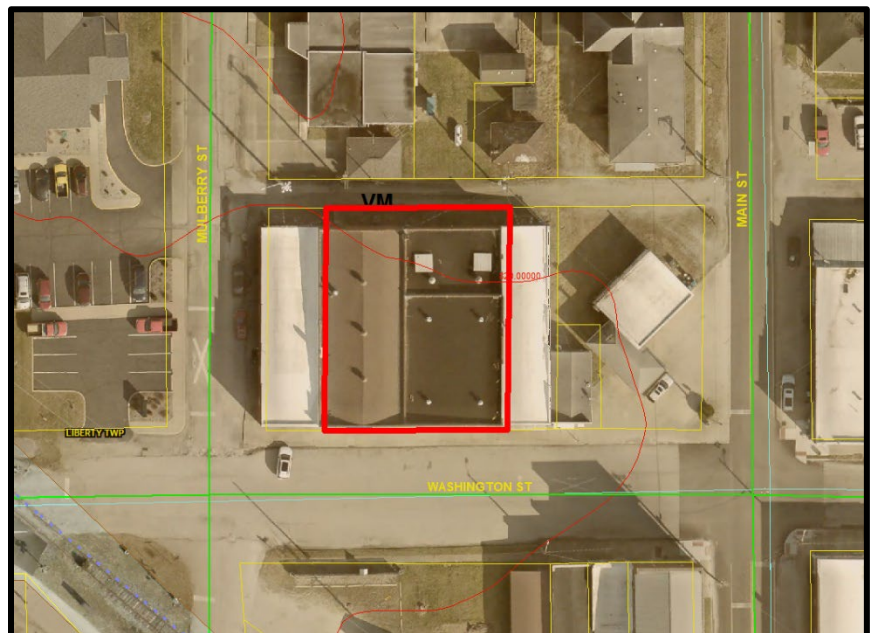
Variance of Development Standards to allow for a projecting sign in the VM (Village Mixed Use) District.

Code Requirement

UDO Section 5.74 Agricultural Commercial, Institutional, and Neighborhood Commercial Signs

Purpose of Requirements: Sign standards provide a balanced system of signage to facilitate communication between people and their environment and to avoid visual clutter that is potentially harmful to traffic safety, property values, community appearance, and the economic vitality of Shelby County.

Property Map



Case Description

- The petitioner intends to install a 35 sq. ft. projecting, lit sign which would project approximately 7 feet from the face of the building identifying an on-site general store.
- The UDO does not expressly permit projecting signs in any zoning district. However, the sign does comply with the City of Shelbyville's standards for projecting signs (other than the City's 6-foot maximum projection standard) and would resemble projecting signs in other jurisdictions.

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: Many other jurisdictions permit projecting signs similar in design to the proposed sign in downtown areas.

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 property is located in downtown Waldron. Many other jurisdictions permit projecting signs similar in design to the proposed sign in downtown areas.

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 not allow a projecting sign similar in design to projecting signs typically permitted in downtown areas.

Staff Recommendation

APPROAL because many other jurisdictions permit projecting signs similar in design to the proposed sign in downtown areas.

Applicant/Owner Information

Applicant:	ASA Signs Above The Rest LLC 702 E Washington St. Shelbyville, IN 46176	Owner:	Jasvir Singh PO Box 348 Saint Paul, IN 47272
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**DEVELOPMENT STANDARDS VARIANCE
FINDINGS OF FACT**

Applicant: MISITE NIGH_C/O ASA ABOVE THEREST, LLC

Case #:

Location: 110 W WASHINGTON ST_WALDRON, INDIANA 46182

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. **General Welfare:** The approval will not be injurious to the public health, safety, and general welfare of the community.

THE FABRICATION AND INSTALL OF THE PROPOSED SIGN IS FABRICATED IN A WAY THAT IT IS NOT INJURIOUS TO THE GENERAL WELFARE OF THE COMMUNITY BECAUSE WE USE INDUSTRY STANDARD APPROVED MATERIALS AND HARDWARE FOR INSTALLATION.

2. **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.

THE USE AND VALUE OF ADJACENT PROPERTIES WILL NOT BE AFFECTED AS THE IMPROVEMENTS BEING MADE ARE THAT OF A PROFIT TO THE COMMUNITY.

3. **Practical Difficulty:** The strict application of the terms of the Shelby County Zoning Ordinance will result in a practical difficulty in the use of the property.

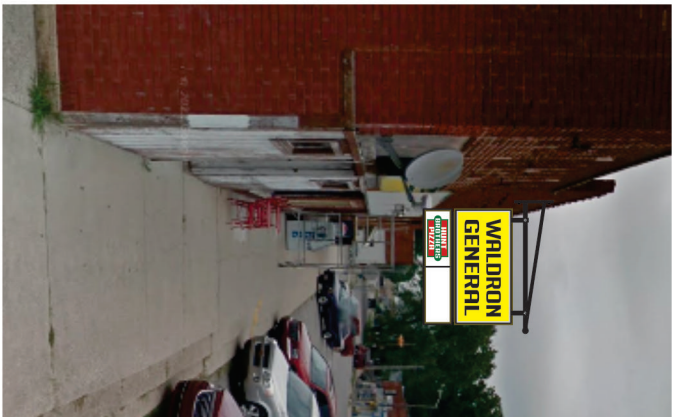
N/A

The Board of Zoning Appeals may review the applicant's findings of fact to assist with their decision making.

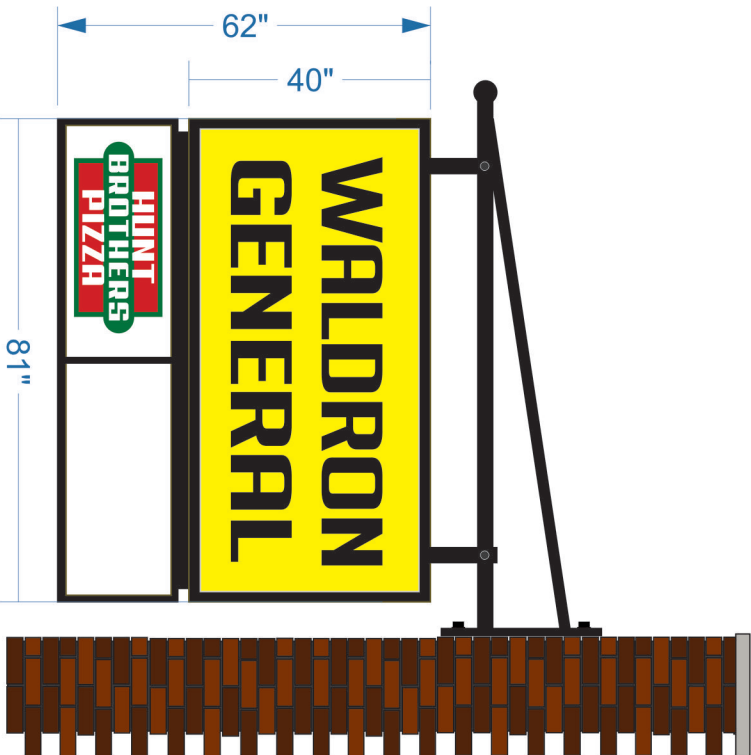
Waldron General Store Blade Sign:



Option #3



SIGN SPECIFICATIONS
WALDRON GENERAL STORE
 DB face blade sign
 Aluminum tube or extruded framing
 2" aluminum retainers
 Painted MP Classice black gloss finish
 White 3/16" Lexan faces
 Applied Opaque / translucent vinyls
 White 6500 LED internal lighting
HUNTS PIZZA
 Separate cabinet w/ 1" retainers
 divided with a 4" reveal
 White 6500 LED internal lighting
 White 3/16" lexan faces w/ trans copy
INSTALL
 Aluminum 2.5" dia tube support
 1/2" aluminum mounting plates
 Gusseted as needed
 Installed with standard wall anchors
ELECTRICAL
 Connect to provided 120v / 20amp
 electrical feed



702 E. Washington St.
 Shelbyville, IN 46176

Client: Waldron General Store
Project: Blade Sign
Specifications: DF Blade Sign w/ Bottom Tenant Panels (2)
Mounting: N/A
Location: 110 W Washington St, Waldron, IN 46182
Designer: SD
Scale:
Date: 04/06/23
Version: v1

Property Details

Location: 5815 W PR 874 S,
Edinburgh, Jackson Township.

Property Size: 8.69-acres.

Current Land Use: Estate
Residential.

Zoning Classification:
A2 (Agricultural)
*This district is established for general
agricultural areas and buildings
associated with agricultural production.*

Future Land Use per Comp Plan
Estate Residential
*The purpose of this category is to
provide for new rural residential housing
opportunities in rural areas not well
suited for agriculture. New residential
development should have reasonable
access to roads and utilities and should
not significantly disrupt agricultural
activities. The residential density of this
category should not exceed one lot for
every two acres.*

	Zoning	Land Use
North	A2	<i>Estate Residential</i>
South	A2/RE	<i>Estate Residential</i>
East	A1	<i>Cropland</i>
West	R1	<i>Single-Family Residential</i>

Staff Report

Case Number: BZA 23-22
Case Name: Mark Lee – Development Standards
Variances

Request

Variations of Development Standards to allow:

1. Three (3) single-family lots to utilize a single private driveway (maximum of two single-family lots permitted).
2. One new lot without frontage on a public road (minimum 50-feet of road frontage required).

Code Requirement

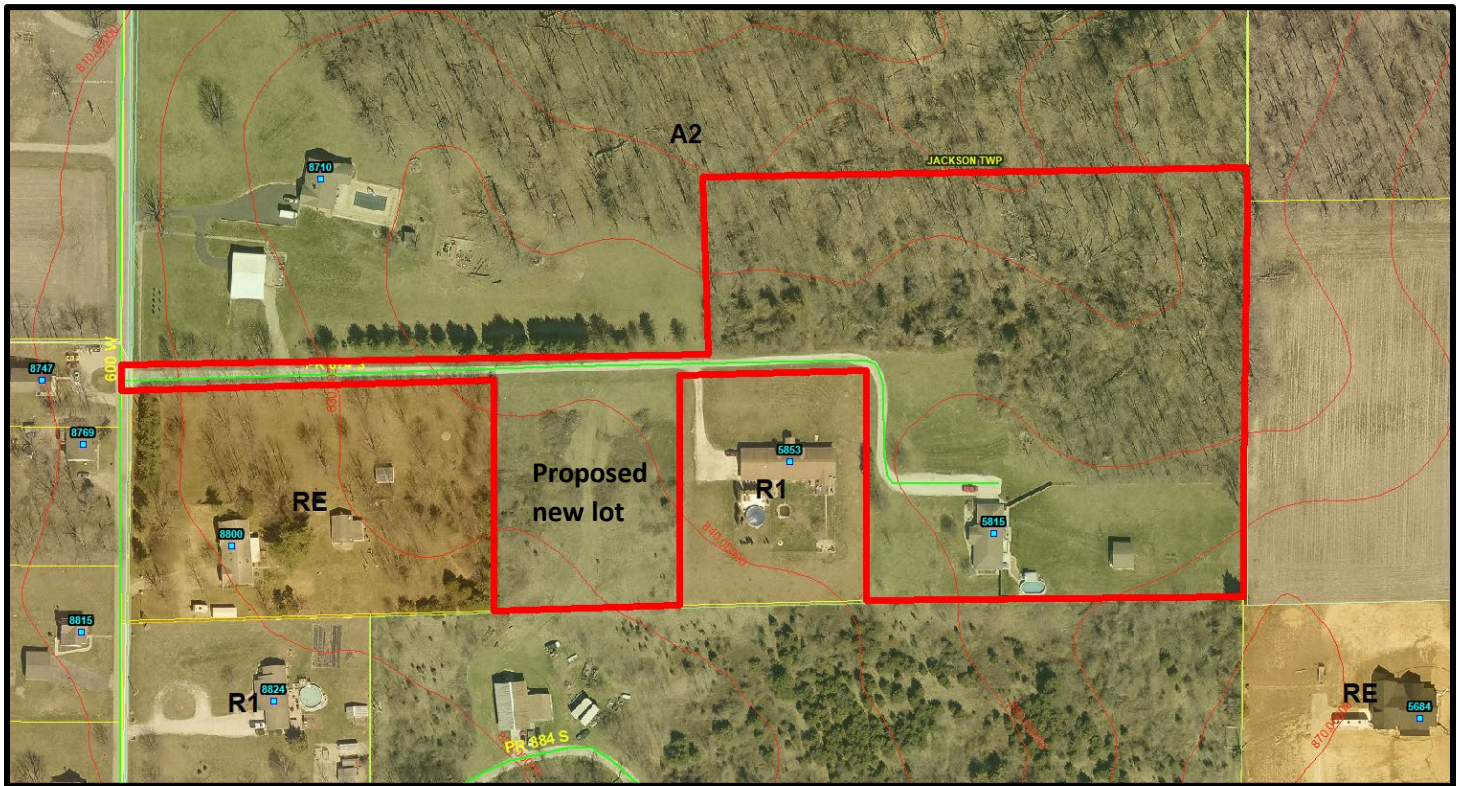
UDO Section 5.17 C 2: *Single-Family Residential Developments:* *The access to three (3) or more single-family lots using a shared easement or similar legal arrangement shall not be considered a driveway. These access facilities shall be established according to the regulations for a public street.*

Purpose of Requirements: The ordinance requires establishment of paved public streets to service multiple single-family lots to mitigate issues associated with shared use of private gravel driveways. Potential issues include:

- Disputes over driveway maintenance and access rights.
- Difficulty posed to visitors in locating homes from the public road.
- Difficulty posed to emergency vehicles in locating homes and turning around within the driveway.
- Vehicle conflicts if two or more cars utilize the driveway simultaneously.
- Migration of dust onto the public road from use of the driveway by multiple vehicles.

The road frontage requirement ensures clear visibility of lots from the public road and promotes orderly development.

Property Map



Case Description

- A gravel driveway, approximately 10-feet in width, currently exists on the subject property which provides access to the subject property and one additional residential lot (5853 PR 874 S). The gravel driveway is identified as PR 874 S and the properties utilizing the driveway have 911 addresses addressed off the Private Road.
- The petitioner intends to subdivide one additional lot off the subject property. This would result in the driveway providing access to three lots. The subdivision would require Plan Commission approval of a Simple Subdivision.
- To subdivide the property in the desired manner without variance approval, the ordinance would require that the petitioner install a public road per County road specifications and dedicate the road, including a 50-foot right-of-way, to the County.
- The property is included in a three-lot minor subdivision, subdivided by the petitioner in 2005. At the time of the subdivision, the petitioner indicated an intent to divide the additional lot from the property in the future, however, did not include the lot in the plat due to the three-lot maximum restriction for minor subdivisions. Current ordinance permits re-subdivision of property in compliance with ordinance standards five years or more after initial subdivision.

- The 2008 UDO established the developed standard limiting shared driveways to no more than two residential lots. Prior to 2008, many rural subdivisions included shared driveways subject to the issues associated with shared driveways listed at the beginning of this report.

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: Approval of the variance would likely impact the safety and general welfare of owners of the lots. The homesites sit a significant distance from the public road and mature trees would obscure homesites from the road, which could pose difficulty in locating the properties in the case of an emergency. The narrow width of the driveway may cause conflict between vehicles using the driveway simultaneously and pose difficulty for large emergency vehicles turning around in the driveway.

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 narrow width of the driveway may cause conflict between vehicles using the driveway simultaneously, which could result in traffic backing out onto or blocking a public road classified as a Collector with a relatively high traffic volume.

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 petitioner has developed the property for residential purposes without approval of a variance.

Staff Recommendation

DENIAL primarily because:

1. The homesites sit a significant distance from the public road and mature trees would obscure homesites from the road, which could pose difficulty in locating the properties in the case of an emergency.
2. The narrow width of the driveway may cause conflict between vehicles using the driveway simultaneously, which could result in traffic backing out onto or blocking a public road classified as a Collector with a relatively high traffic volume.

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

1. **No more than three (3) single-family lots shall utilize the driveway.**
2. **A 15' x 20' paved driveway apron shall be installed at the entrance to CR 600 W.**
3. **An 8' x50' paved or stone pull-off shall be installed on the new lot along the driveway.**

Applicant/Owner Information

Applicant: Mark Lee

Owner: Mark & Rebecca Lee

5815 W PR 874 S
Edinburgh, IN 46124

Property Details

Location: South of and adjoining
7354 S Edinburgh Rd, Edinburgh,
Jackson Township.

Property Size: 19.65-acres.

Current Land Use: Natural
Resources.

Zoning Classification:
RE (Residential Estate)
*This district is established for single-
family detached dwellings in a rural or
country setting.*

Future Land Use per Comp Plan
Estate Residential
*The purpose of this category is to
provide for new rural residential housing
opportunities in rural areas not well
suited for agriculture. New residential
development should have reasonable
access to roads and utilities and should
not significantly disrupt agricultural
activities. The residential density of this
category should not exceed one lot for
every two acres.*

	Zoning	Land Use
North	A1	Agricultural
South	A1/A2	Woodland
East	RE	Estate Residential
West	RE/R1	Estate Residential

Staff Report

Case Number: BZA 23-23
Case Name: Mike & Laura Burton – Development
Standards Variances

Request

Variations of Development Standards to allow:

1. Five (5) single-family lots to utilize a single private driveway (maximum of two single-family lots permitted).
2. Two new lots without frontage on a public road (minimum 160-foot of road frontage required).

Code Requirement

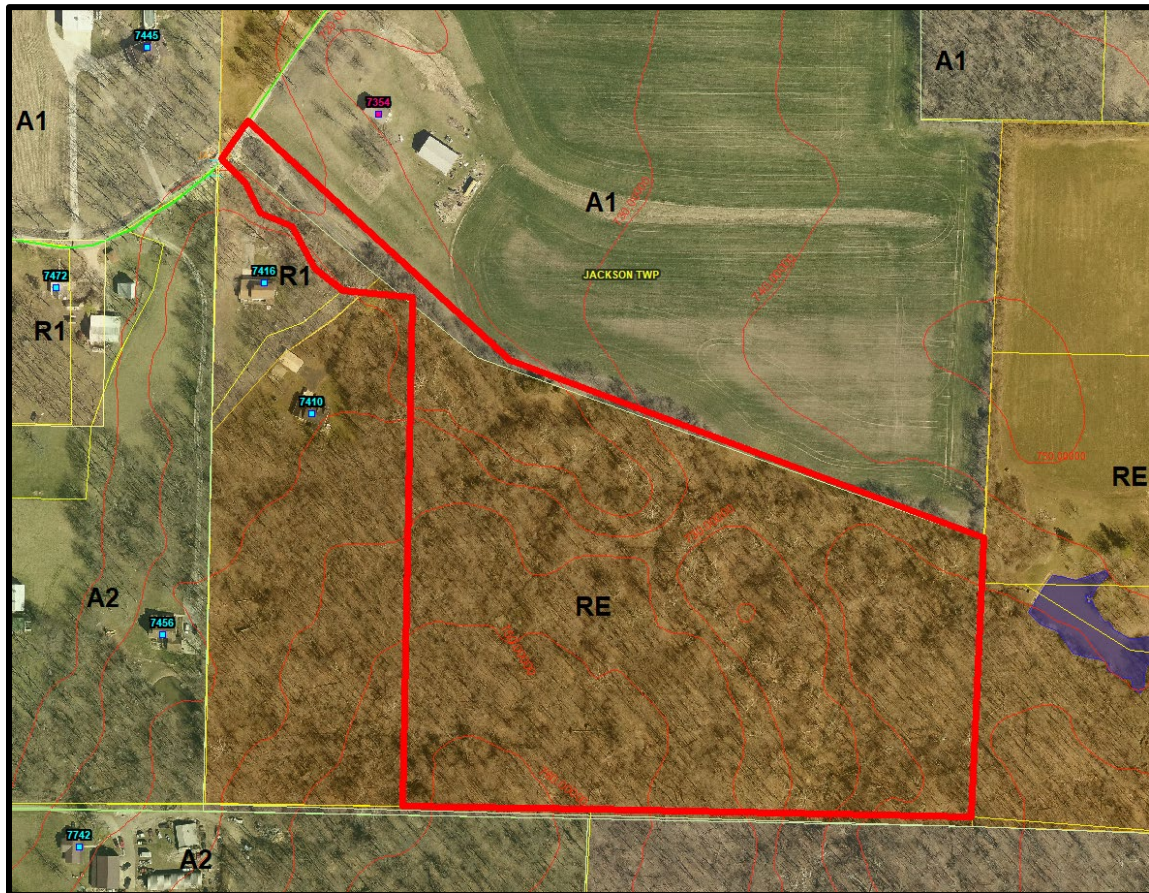
UDO Section 5.17 C 2: *Single-Family Residential Developments:* *The access to three (3) or more single-family lots using a shared easement or similar legal arrangement shall not be considered a driveway. These access facilities shall be established according to the regulations for a public street.*

Purpose of Requirements: The ordinance requires establishment of paved public streets to service multiple single-family lots to mitigate issues associated with shared use of private driveways. Potential issues include:

- Disputes over driveway maintenance and access rights.
- Difficulty posed to visitors in locating homes from the public road.
- Difficulty posed to emergency vehicles in locating homes and turning around within the driveway.
- Vehicle conflicts if two or more cars utilize the driveway simultaneously.

The road frontage requirement ensures clear visibility of lots from the public road and promotes orderly development.

Property Map



Case Description

- A paved driveway, approximately 10-feet in width, currently exists on the subject property which provides access to two adjacent residential lots (7416 S Edinburgh Rd. and 7410 S Edinburgh Rd.).
- The petitioner intends to subdivide the subject property into three lots and extend the existing driveway to these lots. This would result in the driveway providing access to five lots. The subdivision would require Plan Commission approval of a Simple Subdivision.
- To subdivide the property in the desired manner without variance approval, the ordinance would require that the petitioner install a public road per County road specifications and dedicate the road, including a 50-foot right-of-way, to the County.
- In 2011, the petitioner subdivided the subject property from the adjacent lot to the west (7410 S Edinburgh Rd). The Plan Commission approved rezoning of the subject property with a stipulation preventing re-subdivision of the property. This stipulation was recommended by the Planning Director and an adjacent property owner.
- The 2011 subdivision legally established the subject property as a third lot having access from a shared driveway. However, the BZA must grant a variance to allow additional lots to use the driveway.

- The 2008 UDO established the developed standard limiting shared driveways to no more than two residential lots. Prior to 2008, many rural subdivisions included shared driveways subject to the issues associated with shared driveways listed at the beginning of this report.

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: Approval of the variance would likely impact the safety and general welfare of future owners on the lots subdivided from the property. The property sits a significant distance from the public road and mature trees would obscure the new residential homesites from the road, which could pose difficulty in locating the properties in the case of an emergency. The narrow width of the driveway would likely cause conflict between vehicles from five residential lots using the driveway simultaneously and pose difficulty for large emergency vehicles turning around in the driveway.

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 narrow width of the driveway would likely cause conflict between vehicles from five residential lots using the driveway simultaneously, which could result in traffic backing out onto or blocking the public road used by adjacent properties.

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 petitioner may develop the property for residential purposes permitted in the RE District without variance approval.

Staff Recommendation

DENIAL primarily because:

1. The property sits a significant distance from the public road and mature trees would obscure the new residential homesites from the road, which could pose difficulty in locating the properties in the case of an emergency.
2. The narrow width of the driveway would likely cause conflict between vehicles from five residential lots using the driveway simultaneously, which could also result in traffic backing out onto or blocking the public road.

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

1. **No more than five (5) single-family lots shall utilize the driveway.**
2. **Prior to issuance of a Certificate of Occupancy for any new home:**
 - a. **A 50-foot-wide access and utility easement covering the shared portion of the driveway shall be recorded and provided to the Plan Commission office.**

- b. The driveway shall be identified as PR 740 S, and all existing and new properties utilizing the driveway shall be assigned PR 740 S 911 addresses. A sign identifying the road shall be installed at the entrance to Edinburgh Rd.**

- c. An 8' x50' paved or stone pull-off shall be installed between Edinburgh Rd. and the entrance to 7416 S Edinburgh RD.**

Applicant/Owner Information

Applicant:	Mike & Laura Burton 600 Liberty Circle Edinburgh, IN 46124	Owner:	Same
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**DEVELOPMENT STANDARDS VARIANCE
FINDINGS OF FACT**

Applicant: Mike Burton

Case #: _____

Location: _____

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. **General Welfare:** The approval will not be injurious to the public health, safety, and general welfare of the community.

The lots will be secluded far off the main road.
I have taken property lines into consideration, as
I know some of the bounding property is used for
hunting.

2. **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.

We will take property lines into consideration
as to not build close to recreational property.

3. **Practical Difficulty:** The strict application of the terms of the Shelby County Zoning Ordinance will result in a practical difficulty in the use of the property.

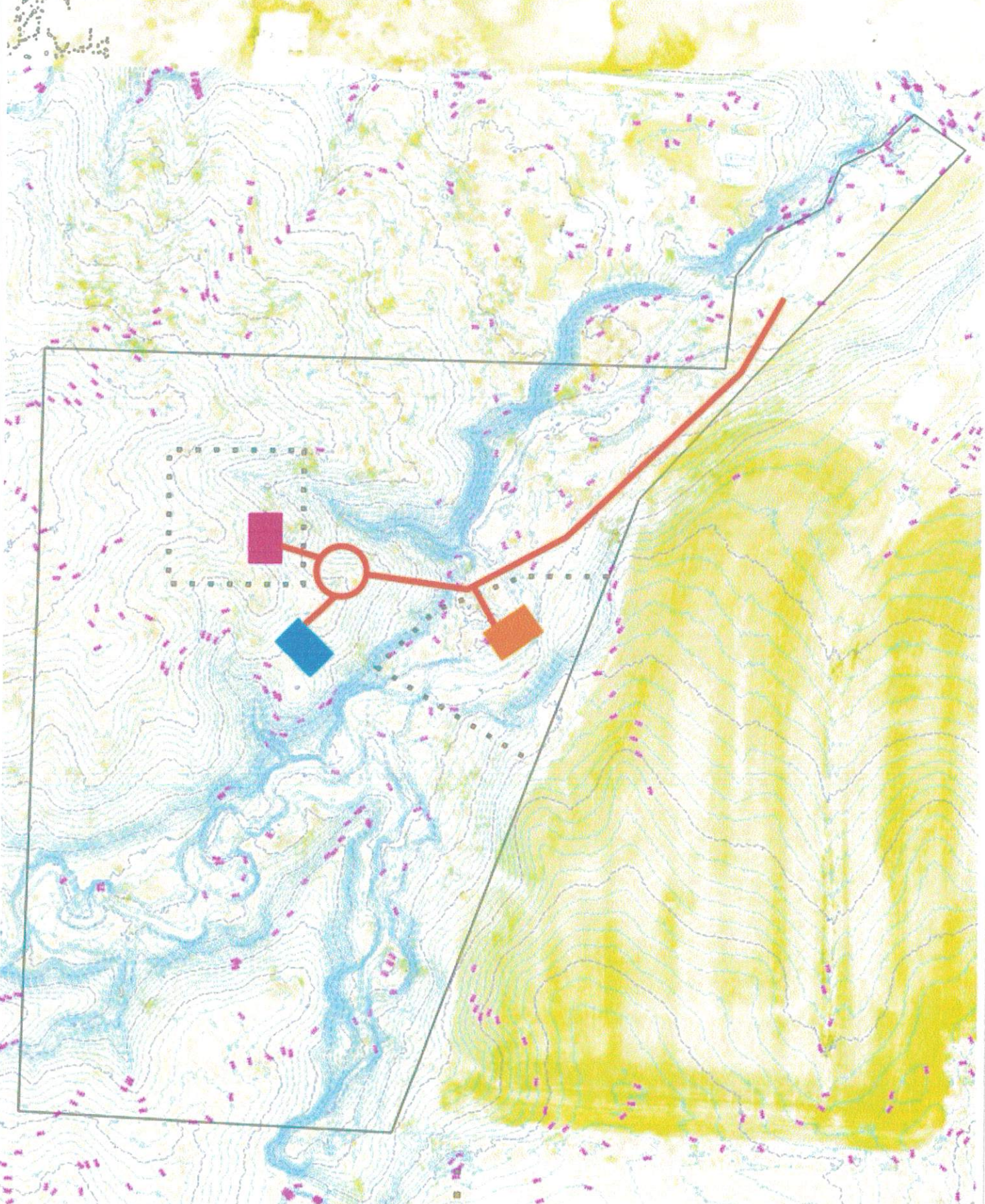
The proposed homesites will take into consideration
topography for drive, septic, and well locations

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:

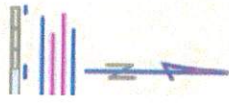
General Welfare: How does the request do no harm to the overall community of Shelby County? (ex. pollution, customer safety, road network safety, building code compliance, etc.)

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.)



-  Homesite Daughter
-  Homesite Main
-  Homesite Sons Farm
-  Drive
-  Property (rough est)



Zoning Violation

Case Number: V23-03
Property Owner: Frank Jr. & Lauren A. Woods
Location: 4842 N Brandywine Rd, Shelbyville, Brandywine Township

Suspected Violation

Evidence of operation of an automobile-oriented business on property in the RE (Residential Estate) District, including outdoor storage of multiple vehicles and trailers.

Section 2.11 – RE District Intent, Permitted Uses, and Special Exception Uses

Evidence of Violation

Staff observed multiple vehicles and trailers on the property over a three-month period. In 2022, the Board denied a variance sought by the property owner to allow for a Type 3 Home Business (automobile repair).

Case History

February 14, 2023 – BZA members expressed concern that vehicles had started to accumulate on the property and asked that the Planning Director to pursue a zoning violation.

March 20, 2023 – The Planning Director sent the property owner a violation letter. USPS tracking listed the letter as left with individual on March 24, 2023.

April 6, 2023 – Ms. Woods contacted the Planning Director. She explained that she and Mr. Woods did not run a business on the property, however had moved vehicles from their business location to the property after their business location had closed. The Planning Director suggested to Ms. Woods that she provide the registrations for all vehicles on the property to show personal ownership of the vehicles.

April 27, 2023 – Mr. Woods contacted the Planning Director. He refused to provide the vehicle registrations and stated that he planned to sell the property. The Planning Director invited him to attend the next BZA meeting to address the Board's concerns, but he refused.

May 9, 2023 – The Planning Director updated the BZA on the status of the zoning violation. The Board requested that the Planning Director notify the property owner that the Board would discuss enforcement action at the next BZA meeting.

May 10, 2023 – The Planning Director sent the property owner a letter notifying them of hearing of the violation case before the BZA on June 13, 2023. USPS tracking listed the letter as left with individual on May 17, 2023.

May 17, 2023 – Mr. Woods contacted the Planning Director. He asked why he continued to receive violation letters and accused the Planning Director of specifically targeting his property. She explained that she does not make decisions on zoning violations, and that he would need to take up his concerns with the Board. He stated that he would attend the next BZA meeting. He stated that he had listed the property for sale. The Planning Director verified the property listing on multiple real estate websites.

BZA Decision

Staff requests that the BZA review the evidence and determine if the property continues to remain in violation of the provisions of the Unified Development Ordinance. Staff requests that the Board provide direction to Staff regarding enforcement action.

Shelby County Plan Commission

25 West Polk Street, Room 201

Shelbyville, Indiana 46176

(317) 392-6338

Planning Director

Desiree Calderella, AICP

NOTICE OF ZONING VIOLATION

via certified mail # 7020 1290 0002 0297 1123

V23-03

March 20, 2023

Frank Jr. & Lauren A. Woods
4842 N Brandywine Rd.
Shelbyville, IN 46176

The Shelby County Board of Zoning Appeals has cited a violation of the Shelby County Unified Development Ordinance for property you own at 4842 N Brandywine Rd, Shelbyville. With this letter, the Shelby County Plan Commission, which is charged with enforcing the ordinance, requests that you correct the violation. The specific terms of the violation are detailed here:

1. **Location of violation:** 4842 N Brandywine Rd, Shelbyville.
2. **Specific description of violations:**
 - a. Evidence of operation of an automobile-oriented business on property in the RE (Residential Estate) District, including outdoor storage of multiple vehicles and trailers.
3. **Specific portions of zoning ordinance violated:**
 - a. Section 2.12 - RE District Intent, Permitted Uses, and Special Exception Uses
4. **Options for corrective action:**
 - a. Discontinue all business operations and remove all items associated with the business from the property. A land use petition seeking to legally establish the business may be filed after correction of the violation.
 - b. Appeal the issuance of this violation to a public hearing of the Shelby County Board of Zoning Appeals.

Corrective action listed above shall be taken by **April 10, 2023**. Failure to take corrective action by April 10, 2023 will result in a **fine of \$250**. If corrective action is not taken by April 10, 2023, the Plan Commission will issue ongoing additional **finest each day up to \$7,500**, which if unpaid will attach as a lien to your property. The Plan Commission may employ any other legal remedy permitted by the Unified Development Ordinance.

If merited, I will work with you on a short extension to bring the property into compliance. If you wish to discuss any other aspect of your case, please call me at (317) 392-6338 or email me at dcalderella@co.shelby.in.us.

Sincerely,



Desiree Calderella, AICP
Planning Director
Shelby County Plan Commission

Bylaws & Rules of Procedure

Shelby County Board of Zoning Appeals

ARTICLE ONE NAME AND RULES

- 101 NAME: The legal name of the Board shall be the “Shelby County Board of Zoning Appeals”.
- 102 RULES OF PROCEDURE: Procedures provided by statute, county ordinances, the Unified Development Ordinance, or these by-laws, shall govern the conduct of the Board meetings.
- 103 MEETING VERSUS HEARING: Within these Rules of Procedure, the word ‘meeting’ refers to all business conducted by the Board and the word ‘hearing’ refers to each individual petition.

ARTICLE TWO MEMBERSHIP, OFFICERS, AND STAFF

- 201 QUALIFICATION OF MEMBERS:
- a. No members of a board of zoning appeals may hold an elected office (as defined in IC 3-5-2-17); or any other appointed office, except as permitted by section IC 36-7-4-902, in municipal, county, or state government.
 - b. Members must be a resident of the jurisdictional area of the board or the member must be a resident of a municipality within the county and also an owner of real property located in whole or in part in the jurisdictional area of the board. However, the majority of members must be residents of the jurisdictional area of the board
 - c. Member Appointments
 - i. Three citizen members appointed by the County Commissioners, of whom one must be a member of the Plan Commission and two must *not* be members of the plan commission.
 - ii. One citizen member appointed by the County Council, who must *not* be a member of the Plan Commission.
 - iii. One member appointed by the Plan Commission from the Plan Commission's membership, who must be a county agricultural agent or a

citizen member of the Plan Commission other than the member appointed under section 201 c i.

- iv. The County Commissioners and County Council may each appoint an alternate member. The alternate member may serve in the place of the regular member(s) appointed by the respective body if the regular member is unavailable to participate in a hearing for any reason.

202 TERM OF MEMBERSHIP: Each appointment is for a four-year term of membership. A member is eligible for reappointment. If the term of an appointed member of the Board expires and the appointing authority does not make an appointment to fill the vacancy, the member may continue to serve until the member's successor is appointed. If a vacancy occurs among the members of the Board, the appointing authority shall appoint a member for the unexpired term of the vacating member.

203 REMOVAL OF MEMBERS: The appointing authority may remove an appointed member for cause as provided in IC 36-7-4-906 or for missing three (3) or more regular consecutive meetings as provided in IC 36-7-4-907 (b). The appointing authority must mail notice of the removal, along with written reasons, to the member at his/her residence address. A member who is removed may appeal the removal within thirty days of receiving notice to circuit or superior court of the County.

204 ELECTION OF OFFICERS: At its first regular meeting in each year, the Board shall elect from its members a President, Vice-President and Secretary.

205 DUTIES OF THE PRESIDENT AND VICE PRESIDENT: The President shall preside over all Board meetings, determine points of order and procedure, and sign all official documents. The Vice-President shall have authority to act as President of the Board during the absence or disability of the President and shall automatically succeed to the office of President upon the resignation or death of the President. In the event the President and Vice-President are unavailable or otherwise unable to preside over a Board meeting, then the Secretary shall have authority to act as President of the Board while such absence continues. If each of the President, Vice-President, and Secretary are unavailable or otherwise unable to preside over a Board meeting, then the Board members present at such hearing shall nominate and approve, by voice vote, a member of the Board in attendance to preside over the meeting.

201 DUTIES OF THE PLANNING DIRECTOR:

- a. The Director shall conduct roll call, read each petition into the record, and provide technical assistance to the Board.
- b. The Director shall be responsible for recording minutes of all Board proceedings.

- c. The Director shall process applications for petitions, shall be responsible for the custody and preservation of the official file for each petition, shall establish the petition docket, and shall write the public notice for each petition.
- d. The Director shall prepare a staff report for each petition to be brought before the Board and an agenda for each meeting.

ARTICLE THREE MEETINGS

- 301 MEETING CALENDAR: The Plan Commission Director shall prepare an annual meeting calendar including the scheduled date for each hearing, filing deadline, and deadline to provide notice. The filing deadline shall be at least twenty-eight (28) days prior to the meeting at which a petition will be considered. The BZA shall adopt the meeting calendar.
- 302 QUORUM: The presence of three members of the Board shall constitute a quorum. An appointed alternate member may serve in order to form a quorum. Five members are also required for quorum in case of a vacancy.
- 303 DISPENSATION OF MEETINGS: Whenever there is a lack of business or whenever a quorum will not be available, the President or Plan Commission Director may dispense with a regular meeting by giving written notice to any petitioner and written or oral notice to all members.
- 304 SPECIAL MEETINGS: Special meetings of the Board may be called by the President or by two members of the Board giving written notice to all members at least three days prior to the meeting and provided that in all cases where notice by publication or notice to interested parties is required, such notice shall be in accordance with IC 5-3-1-2 and IC 5-3-1-4.
- 305 OFFICIAL ACTION: No action of the Board shall be official unless it is authorized at a regular or special meeting by a majority of the entire membership of the Board.
- 306 PARTICIPATION BY ELECTRONIC MEANS OF COMMUNICATION: Board members may participate in meetings and authorize official action by electronic mean of communication as specified in the most current resolution of the Shelby County Board of Zoning Appeals establishing the policy by which members of the Plan Commission may participate by electronic means of communication.

ARTICLE FOUR PROCEDURE FOR PETITION TO THE BOARD

- 401 APPLICATION: Any petition to the Board of Zoning Appeals shall be in writing on forms (including electronic forms) supplied by the Planning Director. These forms shall be executed and filed in the Office of the Plan Commission.
- 402 DOCKET: A docket shall be maintained by the Planning Director.
- 403 DATE OF HEARING: A petition, when filed, shall be initially docketed for hearing at the next regularly scheduled meeting of the Board of Zoning Appeals after the application deadline.
- 404 NOTICE OF PUBLIC HEARING:
- a. The Planning Director shall write each notice of public hearing. The notice of public hearing shall contain at least the following information: 1) the substance of the petition; 2) the address of the subject property; 3) the name of the petitioner; 4) the time and place set for the hearing; 5) a statement that any interested party may voice an opinion upon said hearing date and/or file; and written comments concerning the petition; 6) that the meeting may be continued from time to time.
 - b. Notification by Publication: The Planning Director shall publish in the local newspaper all public hearings in accordance with Indiana Code 5-3-1 and Indiana Code 5-3-1-4.
 - c. Notification to Interested Parties: The Plan Commission Director shall provide the mailing address of all interested parties to the petitioner prior to the notice deadline. Interested parties are defined as all property owners of record, as shown in the County Auditor's Office, of all land within six-hundred and sixty (660) feet of any property line of the petition site.
 - d. Notice must be provided a minimum of ten (10) days prior to the public hearing. The petitioner shall be responsible for providing proof of notice to interested parties under subsection (c) to the Planning Director.
 - e. Notice, on a sign having a minimum area of 18" x 27" and content as prescribed by the Board, shall be posted on the subject property at least ten (10) days prior to the public hearing. Said notice shall be located in a place on the property visible from the public roadway along each public street frontage and shall remain posted until resolution of the petition. One sign per street frontage may be displayed for multiple petitions that apply to a single property.
 - f. Except for costs of publication under subsection (b), all costs of notification to interested parties shall be borne by the petitioner.
- 405 REPRESENTATION: An applicant may be represented by counsel or other representative

at a hearing; however, the applicant must also be present at the hearing in person or by electronic means of communication. No Board member may represent a petitioner at any meeting or hearing.

ARTICLE FIVE CONDUCT & PROCEEDURE OF MEETINGS

501 ORDER OF BUSINESS: The order of business of regular meetings shall be as follows:

- a. Roll Call
- b. Approval of Minutes
- c. Requests for Continuance and Miscellaneous Requests
- d. Public Hearings
- e. Discussion
- f. Adjournment

The order of business may be changed on a per meeting basis in the discretion of the President.

502 PUBLIC HEARINGS: The order and format of each public hearing shall be as follows:

- a. The President shall call up for public hearing and make a determination that the petitioner is present and desires to proceed, or in the alternative, that action to continue, withdraw, dismiss, or amend may be in order. The petitioner can make a request to amend, continue, or withdraw a petition at any time during the public hearing.
- b. The President shall ask the Planning Director to read the petition into the record.
- c. The petitioner(s) must appear in person or by electronic means of communication, but may be represented by agent or attorney, and shall generally have fifteen (15) minutes to present their supporting testimony, evidence, and arguments in favor of the matter being heard.
- d. Any person having an interest in the petition being considered may appear in person, by electronic means of communication, by agent, or by attorney and shall generally have three (3) minutes per person to present testimony, evidence, and arguments for or against the petition, and to ask any questions about the petition. Questions shall be directed to the Board only. Any person interested in any petition

shall have the right to enter oral and written comments concerning the petition.

- e. The petitioner(s) shall generally have fifteen (15) minutes to rebut any opposing testimony, evidence, and arguments and to answer questions posed by the public.
- f. The President shall then close the public comment portion of the hearing and open up the hearing for questions from the Board directed to the petitioner(s), remonstrator(s), Planning Director, Board Attorney, and general public.
- g. The Board may discuss the evidence presented in open meeting.
- h. Any member of the Board may call for Official Action of the Board by motion (see section 508 for procedure regarding Official Action). The motion shall specifically state the Official Action under Section 508(a)(i)-(iv) requested.
- i. The Board may, on its own motion, the motion of a petitioner, or the motion of any person having an interest in the petition, grant any request to exceed the general time allotment for presentation of testimony, evidence, or argument as to a petition.
- j. The Board Attorney shall read the Board's Findings of Fact into the record, unless the President or Planning Director requests that the Findings of Fact be prepared after the conclusion on the Meeting, which case said Findings of Fact shall be submitted to the Board and approved by voice vote at a subsequent meeting of the Board.

503 TESTIMONY AND ARGUMENT: Commentary from the public shall at all times be addressed to the Board through the President and shall not be permitted between opposing parties without consent of the President. The President shall have the authority to terminate repetitious and irrelevant testimony and shall have the authority to extend such time to interested parties as is appropriate in his/her sole judgment in the interest of affording a fair hearing to all.

504 BURDEN OF PROOF: In all petitions the burden of proof is upon the petitioner.

505 OPEN MEETING: No member of the Board shall communicate with any petitioner, advocate, opponent, any other Board member, or any other persons with interest in the petition concerning the merits of any petition pending before the Board at any time before final action thereon, except in a public meeting of said Board. Notwithstanding the foregoing, any member may discuss the merits of a petition pending before the Board with the Planning Director and/or Board Attorney prior to the public meeting.

506 RECUSALS: A member of the Board must recuse himself/herself from consideration of a petition if one of the following applies:

- a. The member is biased or prejudiced or otherwise unable to be impartial; or
- b. The member has a direct or indirect financial interest in the outcome of the zoning decision.

A member who is unsure whether he or she must recuse from consideration of a petition shall consult with the Planning Director and the Board Attorney in advance of the meeting during which the petition will be heard. In the event that a member recuses himself/herself, he/she shall do so as soon as the conflict becomes apparent, and such fact shall be entered in the minutes of the Board. Any recused member must sit in the audience or outside the meeting room during the subject hearing.

507 ABSTENTIONS: An abstention will not count in favor or in opposition of the matter of proposition being considered.

508 OFFICIAL ACTION:

- a. Official Action shall be limited to one of the following options:
 - a. Vote to approve or not approve (deny).
 - b. Vote to approve with stipulations(s) or not approve (deny).
 - c. Vote to continue or to not continue.
- b. Three members of the board must vote in the affirmative for Official Action to pass. Three members of the board must vote in the negative for Official Action to not pass. If an Official Action does not receive three votes in the affirmative or the negative, a member of the Board may call for a vote on an alternative Official Action. If Official Action is not taken, the hearing will be automatically continued to the next regularly scheduled meeting.
- c. Except where a petition has been continued pursuant to these Rules of Procedure, a petition is deemed denied if Official Action does not result in approval, approval with stipulations, or denial by the third hearing of the petition.
- d. The Board shall vote on Official Action by ballot.
- e. No member of the Board shall vote on a petition if he /she is not present during the presentation of the petition hearing. The Secretary of the Board shall read each ballot aloud and indicate the vote of each member. The President shall declare the petition approved, approved with stipulations, denied, or continued.

509 FINDINGS OF FACT: All decisions of the Board with respect to appeals, special exceptions, and variances shall be supported by written findings of fact which shall be made a matter of public record in the official file in the Office of the Plan Commission. Findings of Fact for any denial shall specify the reason for non-compliance.

510 PREVIOUSLY DENIED PETITIONS: Upon denial of a petition by the Board, and for a period of twelve (12) months after such denial, the Planning Director shall not docket for a hearing a substantially similar petition. The Planning Director shall have the sole authority and discretion to determine that an application containing major changes is not substantially similar and may be docketed for hearing within the aforementioned twelve-month period.

ARTICLE SIX DISPOSITION OF MATTERS

601 IN GENERAL: Generally, the final disposition of a petition is in the form of a vote by the Board approving, approving with conditions, or denying the petition.

602 WITHDRAWAL BY PETITIONER:

- a. A petitioner may withdrawal their petition at any time before or during the hearing. Withdrawal of petition during a hearing is at the discretion of the petitioner (or petitioner's authorized representative) and shall not require the approval of the Board.
- b. Withdrawals shall be given in writing prior to the meeting and may be given orally at the meeting.
- c. Absence of the petitioner from the meeting shall be deemed a withdrawal.
- d. No petition which has been withdrawn by the petitioner shall again be placed before the Board of Zoning Appeals for a hearing within a period of three months from the date of said withdrawal, except upon motion of the petitioner to permit re-docketing, adopted by a vote of the majority of the Board's members.

603 CONTINUANCES:

- a. A petitioner may request a continuance of their petition:
 - a. In writing prior to the meeting;
 - b. Orally prior to the public hearing portion of the meeting; or

- c. Orally at any time during their hearing.
- b. The Planning Director may continue any petition prior to the meeting at his/her discretion.
- c. Any other interested party may request a continuance from the Planning Director orally prior to the public hearing portion of the meeting in which a petition is to be heard.
- d. Except for a motion made by a Board member, the party requesting the continuance shall have the burden of showing good and sufficient cause.
- e. It shall be within the discretion of the Planning Director to grant or deny requests for continuances made prior to the meeting by a petitioner or by an interested party under subsection (c) above.
- f. It shall be within the discretion of the Board to grant or deny requests for continuances made at a meeting.
- g. The Board, on its own motion continue the hearing of any petition at any time during the meeting.
- h. A continuance shall be automatically re-docketed to be heard at the next regularly scheduled meeting of the Board. Re-notification is not required.
- i. Only two continuances requested by the petitioner shall be permitted. All petitions not withdrawn by the petitioner and which do not qualify for a dismissal must be heard by the Board no later than three (3) meetings after the time of application.

**ARTICLE SIX
ALTERNATE PROCEDURE: HEARING OFFICER**

601 RULES OF PROCEDURE: All rules of procedure applicable to the Board of Zoning Appeals shall apply to the Hearing Officer, except to the extent that provisions of this article impose a different requirement.

602 MEMBERSHIP AND STAFF:

- a. The Plan Commission shall appoint two (2) hearing officers. One (1) of the hearing officers shall generally fulfill the duties of the hearing officer, and the other hearing officer shall serve as an alternate in the event that the first is not available or has a conflict of interest.
- b. The Hearing Officer must be a resident of the jurisdictional area of the Plan

Commission, or a resident of a municipality within the county and also an owner of real property located in whole or in part in the jurisdictional area of the Plan Commission. The Hearing Officer is typically a member of the Board of Zoning Appeals.

c. Duties of the Planning Director:

- a. The Director shall provide technical assistant to the Hearing Officer.
- b. The Director shall be responsible for recording minutes of all Hearing Officer proceedings.
- c. The Director shall process applications for petitions, shall be responsible for the custody and preservation of the official file for each petition, shall establish the petition docket, and shall write the public notice for each petition.
- d. The Director is not required to write a Staff Report for Hearing Officer Petitions.

603 MEETING DATE: Each petition shall generally be heard (14) fourteen days after the date of submittal of an application and no later than the next regularly scheduled Board of Zoning Appeals Hearing.

604 ELIGIBLE PETITIONS:

- a. The Hearing Officer may approve, approve with conditions or commitments, or deny only Development Standards Variances.
- b. Dimensional Development Standards Variances approved by the Hearing Officer shall not deviate more than 50% from the UDO requirement.
- c. The Planning Director may file a written objection to any petition and require transfer of any petition to the Board of Zoning Appeals.
- d. Any condition or commitment imposed by the Variance Hearing Officer may only be modified or terminated by the Board of Zoning Appeals.

605 TRANSFER OF PETITIONS: One or more of the following circumstances shall result in the transfer of a petition to the next regularly scheduled meeting of the Board of Zoning Appeals. Alternatively, the petitioner may withdraw the petition. New notice for transferred petitions is not required.

- a. The Hearing Officer determines the issues involved warrant consideration by the

Board or it appears likely that the decision of the hearing officer would be appealed to the Board.

- b. The Planning Director files a written objection to a petition because:
 - a. The variance or conditional use sought would be injurious to the public health, safety, morals, and general welfare of the community; or
 - b. The use or value of the area adjacent to the property included would be affected in a substantially adverse manner.
- b. The petitioner does not accept conditions or commitments specified by the Hearing Officer or Planning Director.
- c. A person interested in the petition enters an oral or written objection to the petition.

606 CONDUCT & PROCEEDURE OF MEETINGS: Meetings may be conducted in the same manner as meetings of the Board of Zoning Appeals. However, the Hearing Officer may alter the meeting procedure to expedite the hearing of petitions. The petitioner is not required to be present for the meeting.

607 APPEALS: A decision of the Hearing Officer may not be a basis for judicial review, but it may be appealed to the Board of Zoning Appeals.

ADOPTED this ____ day of _____ 2023 by a vote of _____ ayes and _____ nays of members of the Board of Zoning Appeals of Shelby County, Indiana.

, President



, Secretary

ATTEST:

Jason D. Clark
Plan Commission Attorney