

**Shelby County  
Board of Zoning Appeals**

**June 14, 2022 at 7:00 PM**

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# MEETING AGENDA

## Shelby County Board of Zoning Appeals June 14, 2022, 7:00 P.M.

### CALL TO ORDER

### ROLL CALL

### APPROVAL OF MINUTES

Minutes from the May 10, 2022 meeting.

### OLD BUSINESS

**BZA 22-06 – RICHARD N SMITH: FINDINGS OF FACT.**

### NEW BUSINESS

**BZA 22-24 – TONY HARRISON: DEVELOPMENT STANDARDS VARIANCE.** Located at 4635 W 1120 N, New Palestine, Moral Township.

### DISCUSSION

**REVIEW OF PREVIOUS DEVELOPMENT STANDARDS VARIANCES:** Allow for large accessory structures.

### APPROVED HEARING OFFICER CASES

**BZA 22-25 – GREG KELSAY: DEVELOPMENT STANDARDS VARIANCE.** Located at 3088 S 125 E, Shelbyville, Shelby Township. *Approved June 14, 2022.*

### ADJOURNMENT

The next regular meeting of the Shelby County Board of Zoning Appeals is scheduled for Tuesday, **July 12, 2022 at 7:00 PM.**

## Property Details

**Location:** 4635 W 1120 N, New Palestine, Moral Township.  
Lakeview Estates Section 3, Lot 74.

**Property Size:** 0.63-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.*

***Development Standards:** Promote low-impact development in harmony with a natural setting.*

### Future Land Use per Comp Plan Agricultural

*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.*

	Zoning	Land Use
North	R1	Single-Family Res.
South	R1	Single-Family Res.
East	R1	Single-Family Res.
West	R1	Single-Family Res.

# Staff Report

**Case Number:** BZA 22-24

**Case Name:** Tony Harrison – Development Standards Variance

## Request

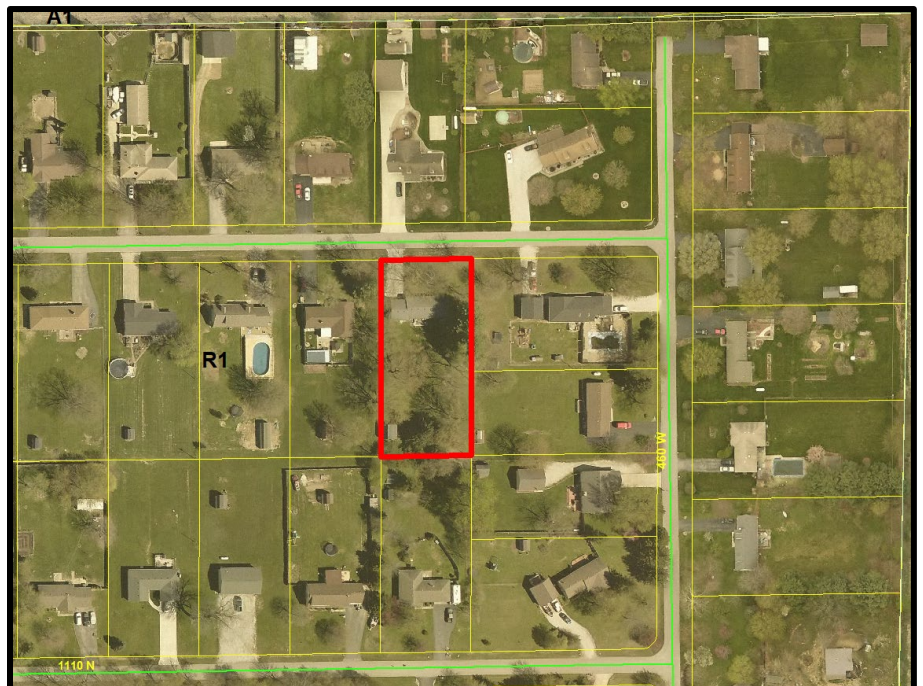
**Variance of Development Standards** to allow for a 1,260 sq. ft. accessory structure (the total square footage of all accessory structures on a lot cannot exceed 50% the square footage of the footprint of the residence).

## Code Requirement

**UDO Section 5.07 F 1: *Maximum Size:*** 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 Requirement:** 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

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- The petitioner plans to construct a 30'x42' (1,260 sq. ft.) accessory structure and patio at the rear of the property. The site plan indicates use of the structure as a garage/shop.
- The square footage of the structure and existing 256 sq. ft. shed would equal approximately 93% 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 petitioner intends to extend the existing gravel driveway along the west side of the house and into the rear yard to provide access to the proposed barn. The UDO requires a 3-foot separation between the driveway and property line.
- The BZA has approved three petitions in the Lakeview Estates neighborhood allowing accessory structures to exceed (or exceed in the future) 50% of the square footage of the primary structure. The BZA should not consider its prior decisions as legally precedential, however, may consider the facts of prior cases for informational purposes.
  - BZA 17-12 – Schmeisser - 11182 N 500 W
    - Proposed building size: 2,249 sq. ft.
    - Additional structures on property: 556 sq. ft.
    - Size of accessory structures in relation to primary structure: 1.25X
    - Approved: 3-1
    - Additional information: Variance also allowed for a Type 3 Home Business
  - BZA 21-19 – Milby - 4622 W 1120 N
    - Proposed building size: 1,200 sq. ft.
    - Additional structures on property: None
    - Size of accessory structures in relation to primary structure: 54%
    - Approved: 3-0
    - Additional information: Board did not approve a request to locate the structure in the front yard
  - BZA 22-13 – Burnett - 4736 W 1100 N
    - Proposed building size: 3,000 sq. ft.
    - Additional structures on property: None
    - Size of accessory structures in relation to primary structure: No primary structure
    - Approved: 5-0
    - Additional information: Board limited structure to 1,000 sq. ft. and a height of 20-feet

## Staff Analysis of Findings of Fact

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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 accessory 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 accessory structure would sit at the rear of the property and several mature trees on the property and adjoining properties would screen the structure. Therefore, the structure would not impact the character of the neighborhood. The structure would not impact continued use of adjacent properties for residential purposes.

**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 does not allow for an accessory structure that would not impact the character of the neighborhood.

**Staff Recommendation**

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**APPROVAL** primarily because the structure would sit at the rear of the property and several mature trees would screen the structure.

**Recommended Stipulation:** The structure shall not exceed the height of house.

*Applicant/Owner Information*

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Applicant:	Tony Harrison	Owner:	Same
	4635 W 1120 N		
	New Palestine, IN 46163		

**DEVELOPMENT STANDARDS VARIANCE  
FINDINGS OF FACT**

Applicant: Tony Harrison

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.

NO IT WILL NOT.

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.

NO IT WILL NOT.

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.

YES, AND WILL NOT AFFECT THE CHARACTER OF LAKEVIEW ESTATES.

**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.)



*Proposed*

# RETRACEMENT SURVEY

LOT #74 IN LAKEVIEW ESTATES, THIRD SECTION  
MORAL TOWNSHIP, SHELBY COUNTY, INDIANA

## LAND DESCRIPTION

LOT #74 IN LAKEVIEW ESTATES, THIRD SECTION, AS PER PLAT OF SAID ADDITION, RECORDED IN PLAT BOOK 6, PAGE 46, IN THE OFFICE OF THE RECORDER OF SHELBY COUNTY, INDIANA.

## LEGEND

R/W RIGHT-OF-WAY  
B/W BUILDING SETBACK  
D. & U.E. DRAINAGE & UTILITY EASEMENT

## POINT INVENTORY REMARKS

(150) IRON ROD FOUND  
(154) (155) 3/8" IRON ROD WITH YELLOW CAP SHARPED W/ALUMINUM SURVEYING SET  
(162) (163) 3/8" IRON ROD FOUND

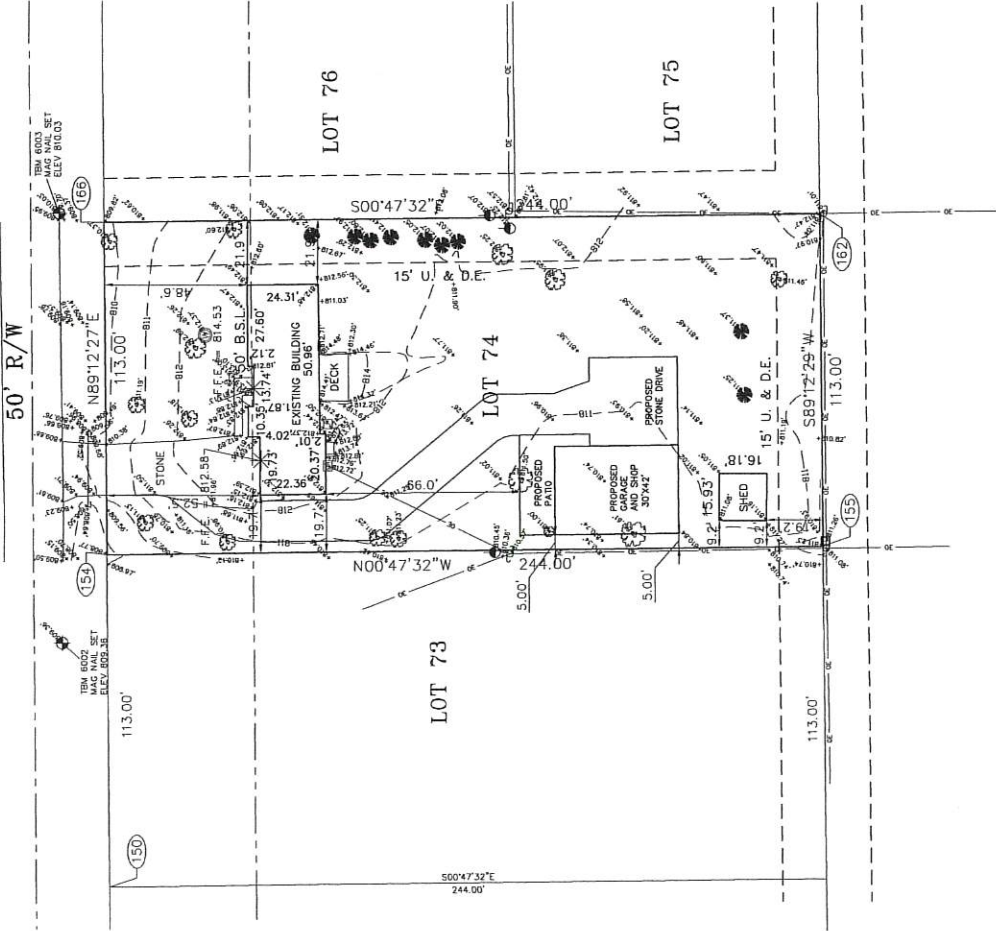
## FLOOD ZONE DEFINITION

ZONE "X" AREA DETERMINED TO BE OUTSIDE 500-YEAR FLOODPLAIN.  
THE SUBJECT PROPERTY IS NOT LOCATED IN A SPECIAL FLOOD HAZARD AREA AS SHOWN ON THE NATIONAL FLOOD INSURANCE PROGRAM AS PER SCALED INTERPRETATION OF FLOOD RATE MAP #1845C 0505C AREA IN ZONE "X" MAP DATED NOVEMBER 5, 2014.

## BENCHMARK INFORMATION

HORIZONTAL AND VERTICAL CONTROL  
COORDINATE SYSTEM: U.S. STATE PLANE 1983 (AT GROUND)  
PROJECT DATUM: WORLD GEODETIC SYSTEM (WGS 1984)  
VERTICAL DATUM: NAVD 88  
ZONE: INDIANA EAST 1301  
GEOID MODEL: GEOID14 (CONUS)  
COORDINATE UNITS: U.S. SURVEY FEET  
HEIGHT UNITS: U.S. SURVEY FEET  
BM 6002  
MAC NAIL SET  
ELEV 809.38  
MAC NAIL SET  
ELEV 810.03

COUNTY ROAD WEST 1120 NORTH  
50' R/W



## SURVEYOR'S REPORT

IN ACCORDANCE WITH TITLE 36, ARTICLE 1, CHAPTER 10 OF THE INDIANA MINUTES AND CODE (RULES FOR LAND SURVEYS IN INDIANA), THE FOLLOWING OBSERVATIONS AND FINDINGS ARE SUBMITTED REGARDING THE VARIOUS UNCERTAINTIES IN THE LOCATIONS OF THE LINES AND MONUMENTS, IN RECORD DESCRIPTIONS AND PLATS, IN LINES OF OCCUPATION, AND AS INDICATED BY RANDOM ERRORS IN MEASUREMENT (RELATIVE POSITIONAL ACCURACY) INTRODUCED BY RANDOM ERRORS IN MEASUREMENT (RELATIVE POSITIONAL ACCURACY) SHOULD ASSUME THERE IS AN AMOUNT OF UNCERTAINTY ALONG ANY LINE EQUAL TO THE SURVEYED LINE. THE DISCREPANCY IN THE LOCATION OF THE LINES OF POSSESSION FROM THE

THESE MAY BE DIFFERENCES OF DEED DIMENSIONS VERSUS MEASURED DIMENSIONS ALONG THE BOUNDARY LINES SHOWN HEREON AND LIKEWISE, THERE MAY BE FOUND SURVEY MARKERS OF THESE DIFFERENCES ARE LESS THAN THE RELATIVE POSITIONAL ACCURACY AND VARIATION OF THE UNCERTAINTY IDENTIFIED FOR THE REFERENCE MONUMENTATION (DISCUSSED BELOW). THE MATHEMATICAL CLOSURE, SUCH DIFFERENCES THAT ARE GREATER THAN THE RELATIVE POSITIONAL ACCURACY OF THE SURVEY ARE THEREFORE DISCUSSED FURTHER BELOW.

THIS SURVEY WAS REBORN AND RECONCILED IN ACCORDANCE WITH AN INDIANA LAND SURVEYOR'S RESPONSIBILITY TO CONDUCT SURVEY IN ACCORDANCE WITH "LAW OF A PRECEDENT" (649 IAC 1-12-11(D)), RULES OF THE INDIANA STATE BOARD OF SURVEYORS AND LAND SURVEYORS, AND THE INDIANA SURVEYING ACT. THE SURVEYOR HAS RESOLVED BOUNDARY LINES, A SOLUTION BASED ON PRINCIPLES DERIVED FROM CONSIDERATION TO PRECEDENT MUST BE RELIED UPON AS THE BASIS FOR A BOUNDARY RESOLUTION, UNLESS PERMETER LINES OF THE SUBJECT TRACT. ALL SURVEY MONUMENTS SET OR FOUND THIS SURVEY ARE FLUSH WITH EXISTING GRADE UNLESS OTHERWISE NOTED.

THE RELATIVE POSITIONAL ACCURACY (DUE TO RANDOM ERRORS IN MEASUREMENT) OF THE SURVEYED LINES IS 0.03 FEET PER 100 FEET. THE SURVEY WAS CONDUCTED IN ACCORDANCE WITH A RURAL CLASS SURVEY (0.30 FEET PLUS 200 PPM) AS DEFINED IN IAC 865. THE WITHIN SURVEY IS A RETRACEMENT SURVEY OF LOT #74 IN LAKEVIEW ESTATES, THIRD SECTION, AS PER PLAT OF SAID ADDITION, RECORDED IN PLAT BOOK 6, PAGE 46, IN THE OFFICE OF THE RECORDER OF SHELBY COUNTY, INDIANA.

CONTROLLING MONUMENTS:  
N.W. CORNER, LOT #73, LAKEVIEW ESTATES, THIRD SECTION  
IRON ROD FOUND  
N.E. CORNER, LOT #73, LAKEVIEW ESTATES, THIRD SECTION  
IRON ROD FOUND (NOT SHOWN, WEST OF PROJECT)  
N.E. CORNER, LOT #75, LAKEVIEW ESTATES, THIRD SECTION  
IRON ROD FOUND (NOT SHOWN, WEST OF PROJECT)

IN MY OPINION, THERE IS 0.3 FEET OF UNCERTAINTY IN THE LOCATION OF THESE MONUMENTS. NO TITLE "GAPS" AND/OR "OVERLAPS" WERE FOUND WITH CURRENT DEED OF RECORDS.  
1. POSSESSION TO THE NORTH IS THE IMPROVEMENTS OF COUNTY ROAD W 1120 NORTH. NO EVIDENCE OF POSSESSION WAS FOUND TO THE EAST, SOUTH, AND WEST.  
2. THE ACCURACY OF ANY FLOOD HAZARD DATA SHOWN ON THIS REPORT IS SUBJECT TO MAP SCALE UNCERTAINTY AND TO ANY OTHER UNCERTAINTY IN LOCATION OR ELEVATION ON THE FLOOD HAZARD DATA. THIS SURVEY IS NOT A FLOOD HAZARD SURVEY. THE NUMBER 18045C 0505C OF THE FLOOD INSURANCE RATE MAPS FOR SHELBY COUNTY, INDIANA (MAPS DATED NOVEMBER 5, 2014).

ADDITIONAL INFORMATION INDICATED HEREON IS AS IDENTIFIED IN COUNTY RECORDS ON X-2/2/2022.

4. THE SURVEY HEREON DOES NOT PURPORT TO SHOW THE WATERBORN AREAS AFFECTING THE SUBJECT PARCELS NOR DOES IT PURPORT TO SHOW THE PRESENCE OR ABSENCE OF ALL REGULATED OR NON-REGULATED DITCHES OR DRAINS.

5. THE WITHIN PLAT AND SURVEY WERE PREPARED WITHOUT BENEFIT OF A CURRENT TITLE SURVEY. THE SURVEYOR HAS CONDUCTED A VISUAL EXAMINATION OF THE RECORDS SUBJECT TO ANY STATEMENT OF FACTS REVEALED BY EXAMINATION OF SUCH DOCUMENTS.

I AFFIRM UNDER THE PENALTIES FOR PERJURY THAT I HAVE TAKEN REASONABLE CARE TO REDUCE EACH SOCIAL SECURITY NUMBER IN THIS DOCUMENT, UNLESS REQUIRED BY LAW (N. NATHAN AL-HOUSE).



**MILLER SURVEYING INC.**  
1-28-2022  
1305002000

LOCATION: LOT #74, LAKEVIEW ESTATES, THIRD SECTION, MORAL TOWNSHIP, SHELBY COUNTY, INDIANA 46040  
JOB NO.: 2022-001  
DATE: 1/27/2022  
JOB NUMBER: 2022-001  
JOB NUMBER: 2022-001



REV.	DATE	BY	DESCRIPTION

THE WITHIN PLAT AND SURVEY WAS PREPARED WITHOUT THE BENEFIT OF A CURRENT TITLE POLICY AND ARE THEREFORE SUBJECT TO ANY STATEMENT OF FACTS REVEALED BY EXAMINATION OF SCHEDULE "A" AND SCHEDULE "B" OF A TITLE POLICY.

THIS SURVEY PLAT HAS BEEN PREPARED FOR USE ON THIS PARTICULAR PROJECT AND FOR THE EXCLUSIVE USE OF THE PERSON(S) OR ENTITY HEREON NAMED AND IS NOT CERTIFIED TO BE USED FOR ANY OTHER PURPOSE. ANY CHANGES TO THE SURVEY PLAT, INCLUDING ETC. COULD CHANGE CONSTANTLY AND THE USE OF THIS SURVEY IS LIMITED ONLY TO THE DATE INDICATED HEREIN.  
THE LOCATION OF THE TITLE LINES AND CORNERS ARE SUBJECT TO THE EVIDENCE FOUND IN THE RECORDS OF SHELBY COUNTY, INDIANA. THE SURVEYOR HAS CONDUCTED A VISUAL EXAMINATION OF THE TITLE LINES AND CORNERS.

## UTILITY NOTE

THIS SURVEY REFLECTS ABOVE GROUND INDICATIONS OF EXISTING UTILITIES. THE SURVEYOR MAKES NO GUARANTEE THAT THE UNDERGROUND UTILITIES SHOWN ARE IN THE EXACT LOCATION INDICATED. ALTHOUGH HE DOES CERTIFY THAT THEY ARE IN THE EXACT LOCATION INDICATED. THE SURVEYOR HAS CONDUCTED A VISUAL EXAMINATION OF THE UNDERGROUND UTILITIES.

RETRACEMENT SURVEY B40255



# Floodplain Development Standards Variance

## FINDINGS OF FACT

**Applicant:** Richard N Smith

**Case #:** BZA 22-06

**Location:** 4310 S Sugar Creek Rd, Franklin, Hendricks Township

1. A showing of good and sufficient cause.

*The petitioner cited lack of known previous flooding at the proposed building site, use of the building as an accessory structure rather than a dwelling, and economic hardship as cause for the variance request. Per FEMA variance criteria guidance, good and sufficient cause deals solely with unique site-specific physical characteristics of the property. The petitioner did not cite a physical characteristic of the property as cause for the variance, therefore good and sufficient cause does not exist.*

2. A determination that failure to grant the variance would result in exceptional hardship.

*Due to lack of sufficient cause to grant the variance, no hardship exists.*

3. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud or victimization of the public, or conflict with existing laws or ordinances.

*Grant of the variance would set a precedent for approval of future variances requests, thereby impacting the eligibility of all properties in the County for federally backed flood insurance.*

4. The variance is the minimum action necessary to afford relief.

*Due to lack of sufficient cause to grant the variance, no action is necessary to afford relief.*

## ***BZA 19-06 – MARYJO PAIGE NEDDERMAN***

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**REQUEST:** Variance of Development Standards to allow for a 1,080 sq. ft. accessory structure (exceeding 50% footprint of residence)

**LOCATION:** 6200 E Phares Ave, Shelbyville

**STAFF RECOMMENDATION:** APPROVAL primarily because Development of the property with a large accessory structure would coincide with the existing development of the area.

**BOARD VOTE:** 5-0

Kevin Carson, Jim Douglas, Dave Klene, Doug Warnecke, Rachel Ackley in attendance.





## *BZA 19-27 – RICHARD CONOVER*

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REQUEST: Variances of Development Standards to allow for a 2,800 sq. ft. accessory structure. (exceeding 2X footprint of residence)

LOCATION:

STAFF RECOMMENDATION: **APPROVAL** primarily because the pole barn would not appear conspicuous from the public road and because existing trees would provide screening between the barn and adjacent properties.

BOARD VOTE: 4-0

Kevin Carson, Jim Douglas, Dave Klene, Doug Warnecke in attendance.





## ***BZA 19-28 – RICHARD & ELIZABETH SANDERS***

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**REQUEST:** Variance of Development Standards to allow for a 1,296 sq. ft. accessory structure:

3. In the front yard
4. 35-feet from the center of the road (minimum 65-foot setback required)
5. Exceeding 50% footprint of residence

**LOCATION:** 3006 E Blue Ridge Orchard, Shelbyville

**STAFF RECOMMENDATION:** DENIAL primarily because the barn would sit directly in front of an adjacent house south of the property, limiting open space and likely causing an enclosure effect due to the proximity of the barn and nearby homes to that house and the ordinance does not prohibit construction of a barn similar in size to other accessory structures in the neighborhood.

Recommended stipulations:

1. The barn shall not exceed the height of the house.
2. The materials and color of the facade of the barn shall match the house.

**BOARD VOTE:** 4-0 with stipulations:

1. The materials and color of the facade of the barn shall match the house.
2. The new driveway providing access to the barn shall be paved.

Dave Klene, Jim Douglas, Doug Warnecke, Kevin Carson attendance.



## ***BZA 20-32 – CHRISTOPHER & DEBORAH SMALLEY***

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**REQUEST:** Variance of Development Standards to allow for a 2,250 sq. ft. accessory structure

1. In the front yard
2. Exceeding 50% footprint of residence

**LOCATION:** 3215 E Michigan Rd, Shelbyville

**STAFF RECOMMENDATION:** APPROVAL to allow a pole barn in the front yard.

DENIAL of allowing the pole barn to exceed 50% the footprint of the residence.

The location of the residence on the property limits the buildable area in the side and rear yards, therefore a practical difficulty exists that would warrant allowing an accessory structure to encroach into the front yard. However, a significantly large accessory structure in the front yard would likely have an aesthetic impact on the area, notably because other properties in the area do not include accessory structures in the front yard.

**BOARD VOTE:** 3-0 both variances.

Dave Klene, Jim Douglas, Doug Warnecke in attendance.





## *BZA 21-19 – ANDREW L MILBY*

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REQUEST: Variance of Development Standards to allow for a 1,200 sq. ft. accessory structure.  
(exceeding 50% footprint of residence)

LOCATION: 4622 W 1120 N, New Palestine

STAFF RECOMMENDATION: APPROVAL

BOARD VOTE: 3-0

Dave Klene, Kevin Carson, Doug Warnecke in attendance.



## ***BZA 21-34 – RICHARD CONOVER***

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**REQUEST:** Variances of Development Standards to allow for an accessory structure:

1. In the front yard;
2. Ten (10) feet from the right-of-way of S Riley Hwy (minimum 35-foot setback required).

**LOCATION:** 413 E Edgewood Dr, Shelbyville

**STAFF RECOMMENDATION:** APPROVAL primarily because the structure would sit in the front yard that functions as the property's side yard and comply with the side-yard setback requirement, therefore the structure would not conflict with the orientation and placement of other accessory structures in the neighborhood.

**BOARD VOTE:** 3-2, with Kevin Carson and Jim Douglas casting the dissenting votes.  
Kevin Carson, Jim Douglas, Dave Klene, Doug Warnecke, Rachel Ackley in attendance.





## *BZA 21-40 – KIMBERLY JONES*

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**REQUEST:** Variance of Development Standards to allow for a 1,440 sq. ft. accessory structure. (exceeding 50% footprint of residence)

**LOCATION:** 6933 N 325 W, Fairland

**STAFF RECOMMENDATION:** APPROVAL primarily because the property sits in an area relatively isolated from residential development. A large, detached garage would not conflict with the agricultural character of the area.

**BOARD VOTE:** 5-0

Kevin Carson, Jim Douglas, Dave Klene, Doug Warnecke, Rachel Ackley in attendance.

