

**Shelby County
Board of Zoning Appeals**

July 12, 2022 at 7:00 PM

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MEETING AGENDA

Shelby County Board of Zoning Appeals July 12, 2022, 7:00 P.M.

CALL TO ORDER

ROLL CALL

APPROVAL OF MINUTES

Minutes from the June 14, 2022 meeting.

OLD BUSINESS

None.

NEW BUSINESS

BZA 22-22 – ERIC ROBERTSON: USE & DEVELOPMENT STANDARDS VARIANCES. Located at 3145 W Old SR 252, Flat Rock, Washington Township.

BZA 22-26 – JASON A SMITH: DEVELOPMENT STANDARDS VARIANCES. Located at 5917 W 700 S, Edinburgh, Jackson Township.

DISCUSSION

None.

ADJOURNMENT

The next regular meeting of the Shelby County Board of Zoning Appeals is scheduled for Tuesday, **August 9, 2022 at 7:00 PM.**

Property Details

Location: 3145 W Old SR 252, Flat Rock, Washington Township.

Property Size: 44.19-acres.

Current Land Use: Agricultural Commercial.

Zoning Classification:

A4 (Agricultural Commercial)

This district is established for commercial and industrial uses directly related to agriculture and compatible with rural/agricultural areas.

Development Standards: *Enact development standards to minimize the impacts on adjacent properties while encouraging economic vitality within the Agricultural Commercial District.*

Board of Zoning Appeals: *Protect the adjacent land and uses by through the use of appropriate buffers and setbacks. 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

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	A1	Cropland
South	A1	Cropland/Woodland
East	A1	Cropland
West	A1/R1	Cropland/Single-Family

Staff Report

Case Number: BZA 22-22

Case Name: Eric Robertson – Use & Development Standards Variances

Request

Variance of Use to allow for an occasional flea market in the A4 (Agricultural Commercial) District.

Variances of Development Standards to allow:

1. A gravel driveway.
2. Lack of required landscape buffer yards along property lines.

Code Requirement

UDO Section 2.09 - A4 District Intent, Permitted Uses, and Special Exception Uses

UDO Section 5.18 C: Materials: *Asphalt, concrete, or other non-porous materials, or gravel shall be acceptable driveway surface materials.*

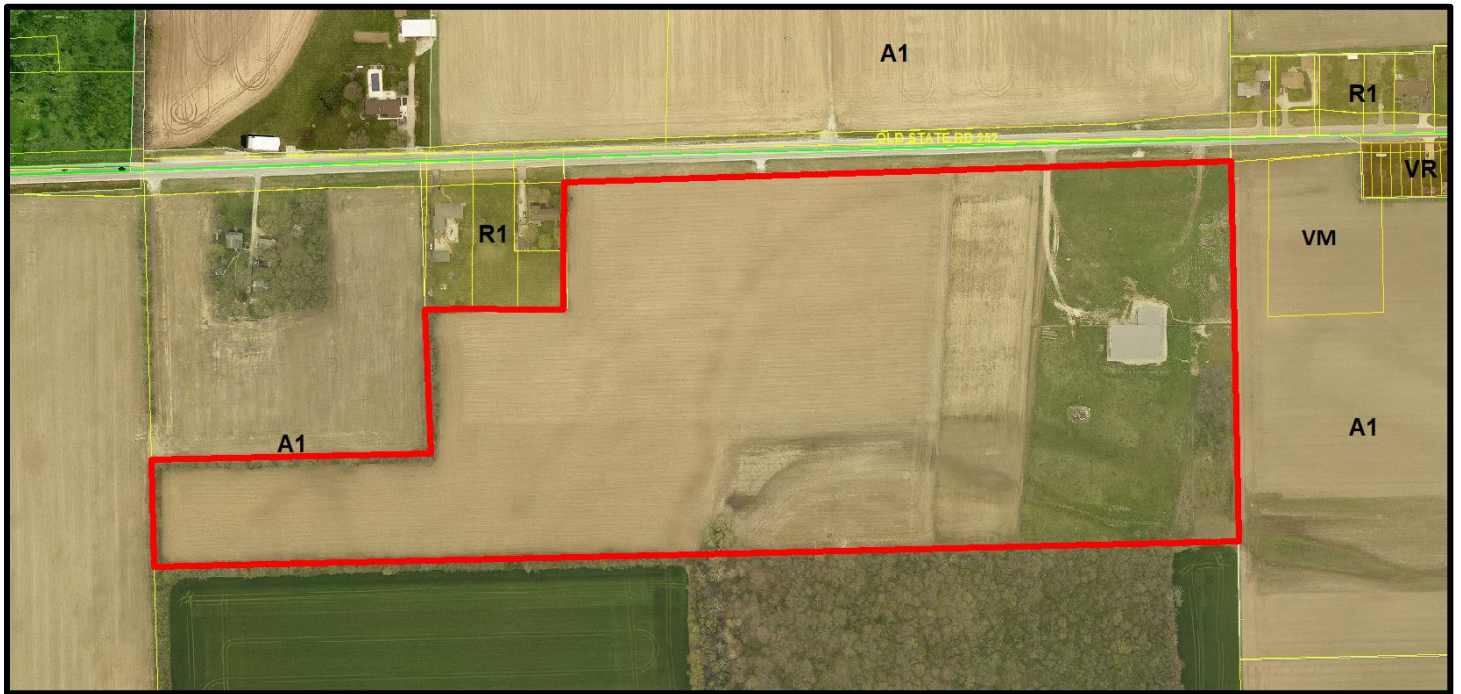
UDO Section 5.49: Buffer Yard Landscaping Standards:

Adjoining A1 – Buffer Yard “A”: *One (1) canopy tree and one (1) ornamental or evergreen tree shall be planted for every seventy (70) feet of contiguous boundary with the adjacent lot. Each tree shall be planted within twenty (20) feet of the property line, but no closer than five (5) feet to the property line.*

Adjoining R1 – Buffer Yard “B”: *One (1) canopy tree and two (2) ornamental or evergreen trees shall be planted for every sixty (60) feet of contiguous boundary with the adjacent lot. Each tree shall be planted within fifteen (15) feet of the property line, but no closer than five (5) feet to the property line.*

Purpose of Requirements: Paved driveways in the A4 District limit migration of dust from gravel parking areas onto the public road. Buffer yard landscaping standards enhance the visual quality of developments, maintain community character, buffer adjoining properties from higher intensity uses, minimize stormwater runoff, and improve air quality.

Property Map



Case Description

- The petitioner currently uses the property for crop production and equipment storage. The petitioner intends to use the uncultivated portion of the property for occasional public auctions of agricultural and construction equipment and occasional flea markets.
- The property currently includes an 8,400 sq. ft. pole barn with plumbing, septic system, wood and wire fence, and gravel parking and maneuvering areas.
- The UDO permits crop production and public auctions of agricultural and construction equipment in the A4 District. Therefore, the use variance request only applies to use of the property for occasional flea markets. The petitioner's Statement of Intent includes the following information:
 - Flea markets and associated parking would occur in the existing hay field.
 - Days & Hours of Operation: Typically, weekends; 8:00 AM to Dusk
 - Maximum Number of Customers: 500 per weekend
 - Signage: Temporary placement of small advertising signs prior to each flea market.
- On April 26, 2022 the Plan Commission granted a favorable recommendation to rezone the property from A1 (Conservation Agricultural) to A4 (Agricultural Commercial). The County Commissioners approved this rezoning on May 16, 2022. The rezoning included two stipulations:
 - All uses of the property, other than agricultural production, shall be setback at least 80-feet from all property lines adjoining property in the R1 (Single-Family Residential) District.

- A State Design Release, or written verification from the State that a State Design Release is not required, for the existing building and any applicable remodel permits shall be obtained prior to public use of the property.
- Per Section 5.01 of the UDO, all land use changes are subject to all development standards and regulations applicable to the zoning district. Therefore, the petitioner must upgrade the site to comply with the standards of the A4 District prior to commencement of any new use permitted in the A4 District. The petitioner has chosen to request development standards variances from the driveway and landscaping standards applicable to the A4 District.
- The development standards applicable to the A4 District serve to mitigate the impacts of all uses permitted in the A4 on adjacent properties. Examples of the higher intensity uses permitted in the A4 District include bio-diesel production, food processing, heavy equipment repair, liquid fertilizer storage/distribution, and welding.

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: The petitioner must obtain a State Design Release, or written verification from the State that a State Design Release is not required, for the existing building and any applicable remodel permits prior to public use of the property. The proposed use of the property would comply with all State and County codes, other than the requested development standards variances.

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 flea market would occur in the hay field located over 500-feet from the closest residential property. Use of the property for a flea market would not impact continued use of adjacent properties for agricultural production. Traffic generated by the flea market would not substantially increase the current rate of traffic on Old SR 252.

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

Staff Analysis: Convenient access to the property from an arterial road supports use of the property for limited retail services not directly related to agricultural which provide a service currently unavailable in the area.

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 prevent use of the property for a retail amenity currently not available in the area.

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

View of Property from Old SR 252



Staff Photograph – March 2022

STATEMENT OF INTENT (ONLY REQUIRED FOR VARIANCE 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: Applicant has pending a rezoning application to rezone to A4; in order to allow occasional auctions of equipment. Applicant proposes a use variance from the A4 permitted uses to permit an occasional flea market on the property.

2. Days & Hours of Operation: Typically weekends; 8:00 a.m. to dusk

3. Maximum Number of Customers per Day/Week/Month: Estimated maximum of 500 per weekend when a flea market is held.

4. Type and Frequency of Deliveries: N/A

5. Description of any Outdoor Storage: N/A

6. Description, Size, and Placement of any Signage: Temporary small signs adjacent to access drive to advertise flea market in days prior to each.

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.): Flea market would take place in unimproved hay field in center of parcel (approximately 5 acres), which would also accommodate parking. No improvements planned at this time in this specific area.

USE VARIANCE
FINDINGS OF FACT

Applicant: Eric Robertson

Case #: _____

Location: 3145 West Old State Road 252

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.
The proposed use to accommodate a flea market on an occasional basis creates
no safety hazard, pollution, or unreasonable amount of noise.

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 proposed use will not interfere with neighboring agricultural and residential
uses. An occasional flea market will add only minimally to highway traffic on a road
which already sees high traffic volumes. The distance of the proposed use is sufficiently far away from area houses so as to not interfere with their enjoyment of their homes.

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.
With a Dollar General retail store forthcoming which will border the property, and with commercial uses in Flat Rock nearby, a practical
difficulty exists if applicant is unable to engage in the proposed flea market use which would be consistent with nearby uses.

4. **Unnecessary Hardship:** The strict application of the terms of the Shelby County Zoning Ordinance will constitute an unnecessary hardship as they are applied to the property for which the variance is sought.
The use of the property as a flea market would complement and enhance the equipment auction
use for which applicant seeks a rezoning and vice-versa. A restriction from having a flea market at the property
would be unnecessary and of no public benefit if applicant will be permitted his auction use through the rezoning.

5. **Comprehensive Plan:** The granting of the variance does not interfere substantially with the Comprehensive Plan.
The proposed flea market use is consistent with the commercial growth in the Flat Rock
vicinity. It would provide an enjoyable activity and opportunity for residents of the area.

DEVELOPMENT STANDARDS VARIANCE
FINDINGS OF FACT

Applicant: Eric Robertson
Case #: BZA 22-22
Location: 3145 West Old State Road 252, Flat Rock

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.
A variance permitting the omission of buffer yard landscaping and a hard surface
driveway in no way creates a health or safety hazard, pollution, noise, odors, etc. for the
community.
- 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.
With a substantial agricultural and open space buffer between the
subject auction/flea market use and neighboring uses, the lack of landscaping and a
hard surface driveway has little or no impact on the use and value of
adjoining properties.
- 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.
Requiring a tree buffer along neighboring agricultural and residential uses creates vegetative
competition/shade for crops on the adjoining agricultural use, as well as on the
remaining agricultural uses on the subject property.

With the infrequent use of the property for auctions and flea markets, a hard surface driveway is an unnecessary maintenance concern.

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:

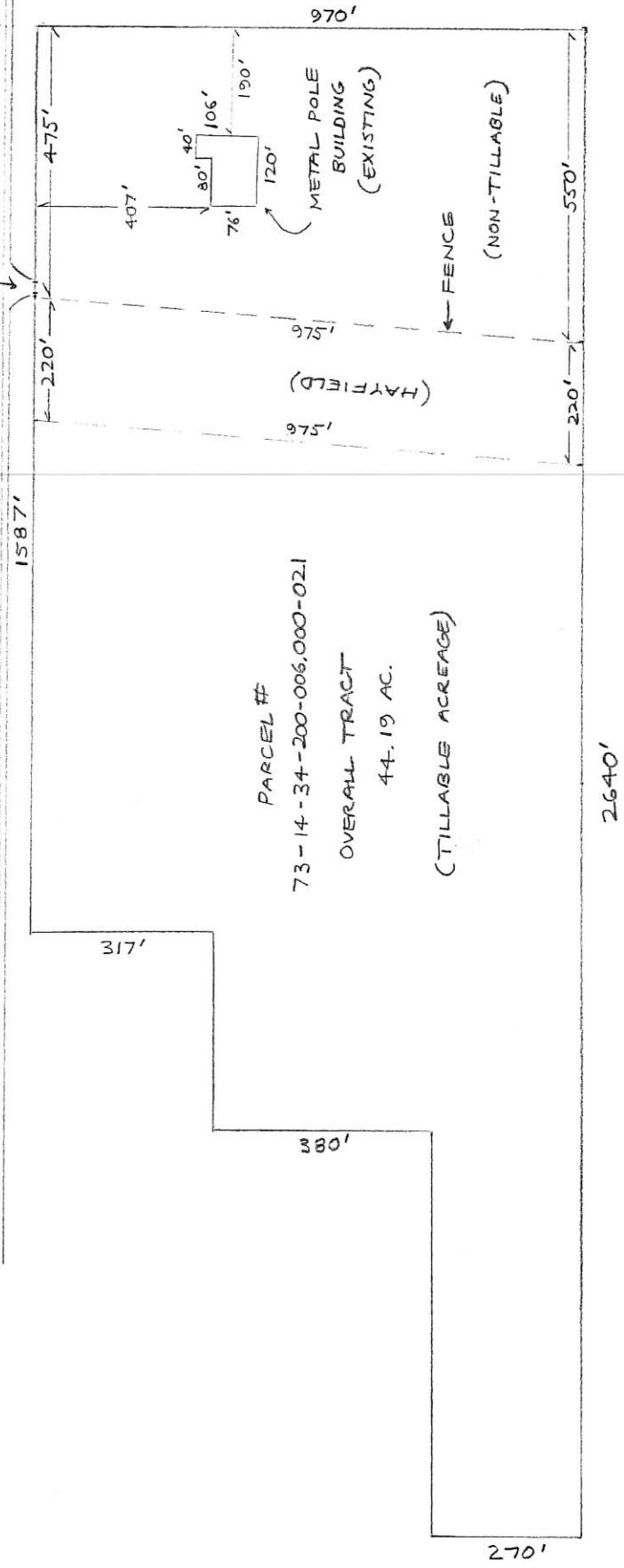
- General Welfare:** How does the request do no harm to the overall community of Shelby County? (ex. pollution, customer safety, road network safety, building code compliance, etc.)
- Adjacent Property:** How does the request do no harm to adjoining property and neighborhood? (ex. noise, odor, traffic 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.)

ERIC ROBERTSON
SITE PLAN



STATE ROAD 252

ACCESS DRIVE



Property Details

Location: 5917 W 700 S, Edinburgh, Jackson Township.

Property Size: 5.17-acres.

Current Land Use: Estate Residential.

Zoning Classification:

RE (Residential Estate)

Intent: This district is established for single-family detached dwellings in a rural or country setting.

Development Standards: Promote low-impact development in harmony with a natural 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	Cropland
South	A2	Cropland
East	RE	Estate Residential
West	RE	Estate Residential

Staff Report

Case Number: BZA 22-26

Case Name: Jason A Smith – Development Standards Variances

Request

Variances of Development Standards to allow for a 1,200 sq. ft. pole barn:

1. In the front yard;
2. Adjoining the right-of-way of CR 700 S (minimum 50-foot setback required).

Code Requirement

UDO Section 5.04 C – Placement: *A permitted accessory structure shall not be placed in the front yard of any lot, unless placed 350 feet or greater from the front property line.*

UDO Section 2.12 – Minimum Front Yard Setback: *50-feet.*

Purpose of Requirements: Prohibiting the construction of accessory structures in the front yard maintains the primary structure as the visual focal point of the property. Front setback requirements allow for open space, ensure visibility along roadways, and reduce traffic hazards along roadways.

Property Map



Case Description

- The petitioner plans to construct a 30'x40' (1,200 sq. ft.) pole barn at the northwest corner of the property.
- The proposed building site sits on property included in the Taylor Minor Subdivision Plat. The plat includes a 25-foot half right-of-way dedicated to the County. The proposed building site does not encroach into the right-of-way.
- The petitioner has installed a gravel driveway from the existing paved driveway through the right-of-way to access the proposed pole barn.
- The elevation of the property decreases from the homesite by about 10-feet into a ravine that runs through the center of the property, and then increases about 20-feet out of the ravine and then about another 10-feet to the rear property line.
- The petitioner indicated that the septic system sits southeast 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: Construction of the pole barn 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. The 25-foot half right-of-way exceeds the typical 16-foot assumed half right-of-way of most County roads, therefore the location of the barn at the 25-foot half right-of-way line should not pose a hazard to motorists.

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 pole barn would sit northwest of the house rather than directly in front of the house, limiting the aesthetic impact of placement of the pole barn in the front yard.

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 slope of the property, the presence of a ravine through the property, and location of the septic system pose a practical difficulty in construction of the pole barn on any area of the property other than in front of the house and near the road.

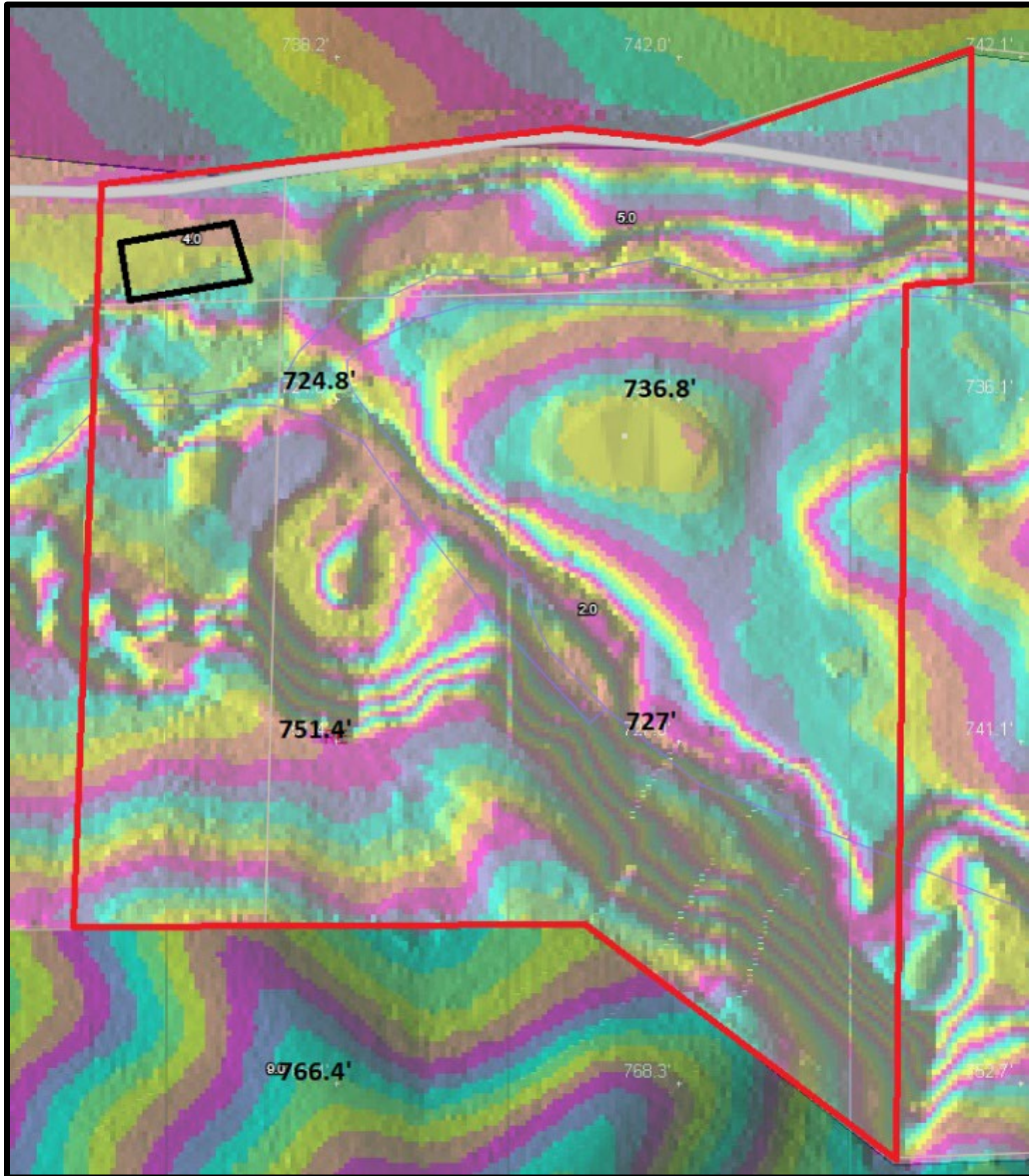
Staff Recommendation

APPROVAL primarily because the slope of the property, the presence of a ravine through the property, and location of the septic system pose a practical difficulty in construction of the pole barn on any area of the property other than in front of the house and near the road.

Applicant/Owner Information

Applicant:	Jason A Smith	Owner:	Jason & Brandi Smith
	5917 W 700 S		
	Edinburgh, IN 46124		

Property Contours



View of Building Site from Road, Looking West



Staff Photograph – June, 2022

View of Building Site from Road, looking East



Staff Photograph – June, 2022

**DEVELOPMENT STANDARDS VARIANCE
FINDINGS OF FACT**

Applicant: Jason A. Smith
Case #: _____
Location: 5917 W 700 S Edinburgh, IN 46124

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 purpose of the pole barn would be for personal use and will not cause injury or harm to the community.

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 desired location of the pole barn would have minimal visibility from adjacent properties.

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 desired location of the pole barn would not affect the landscape, well and septic system.

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.)