

Shelby County  
Board of Zoning Appeals

July 9, 2019 at 7:00 PM

# Table of Contents

Agenda .....	3
Summary of Cases .....	4
BZA 19-15 Stephen Blair – Findings of Fact .....	6
BZA 19-21 Gary & Jane Larkey – Use Variance .....	7
Staff Report .....	7
Petitioner’s Statement of Intent .....	10
Petitioner’s Findings of Fact .....	11
Area & Zoning Map.....	12
BZA 19-22 Jacob Brattain – Use & Development Standards Variances .....	13
Staff Report .....	13
Type 3 Home Business Standards.....	17
Petitioner’s Statement of Intent .....	19
Petitioner’s Findings of Fact .....	20
Area & Zoning Map.....	21
Site Plan.....	22
BZA 19-23 John & Mary Fisher – Special Exception .....	23
Staff Report .....	23
Petitioner’s Findings of Fact .....	26
Area & Zoning Map.....	27
Site Plan.....	28
VI9-12 Augustine – Violation.....	29

# MEETING AGENDA

Shelby County Board of Zoning Appeals  
July 9, 2019, 7:00 P.M.

CALL TO ORDER

ROLL CALL

APPROVAL OF MINUTES

Minutes from the June 11, 2019 meeting.

OLD BUSINESS

BZA 19-15 – STEPHEN BLAIR: FINDINGS OF FACT

NEW BUSINESS

BZA 19-20 – MICHAEL BROCK: DEVELOPMENT STANDARDS VARIANCE  
*This case has been WITHDRAWN by the petitioner*

BZA 19-21 – GARY & JANE LARKEY: USE VARIANCE

BZA 19-22 – JACOB BRATTAIN: USE & DEVELOPMENT STANDARDS VARIANCES

BZA 19-23 – JOHN & MARY FISHER: SPEICAL EXCEPTION

DISCUSSION

VI9-12 - Augustine Violation

Black Violation Update

McIntire Violation Update

ADJOURNMENT

The next regular meeting of the Shelby County Board of Zoning Appeals is scheduled for Tuesday, September 13, 2019 at 7:00 PM.

# Summary of Cases

## *BZA 19-21 – GARY & JANE LARKEY*

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REQUEST: Variance of Use to allow for an Event Venue in the AI (Conservation Agricultural) District.

LOCATION: Moral Township at 8609 W 1200 N, New Palestine.

STAFF RECOMMENDATION: APPROVAL primarily because the location of the event venue in the center of an 80-acre agricultural field allows for a low-intensity commercial use that would not pose a nuisance to adjacent residential properties.

### **Recommended Stipulations**

- A State Design Release shall be obtained and any improvements to the barn required by the State shall be completed prior to use of the building for a public event venue.
- Written approval from the State Health Department shall be obtained and any improvements to the property required by the State shall be completed prior to use of the property for public events.

## *BZA 19-22 – JACOB BRATTAIN*

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### REQUESTS:

1. Variance of Use to allow for a small construction and property maintenance business and possible similar future commercial uses in the AI (Conservation Agricultural) District.
2. Variances of Development Standards to allow for:
  - i. A primary structure 35 ft from the proposed SR 9 right-of-way line, 15 ft from the north property line, and 25 ft from the south property line (minimum 50-foot front setback & 40-foot side setbacks required);
  - ii. An accessory structure 5 ft from the rear property line (10-foot rear setback required);
  - iii. Lot coverage exceeding 15%;
  - iv. Use of an existing driveway with a maximum width of about 60 ft and located 5 ft from the south property line (maximum 40-foot width permitted and 10-foot setback required);
  - v. A wall sign not to exceed 10 sq ft in area (commercial signs not permitted in the AI District).

LOCATION: Marion Township at the address 6082 N SR 9, Shelbyville.

### STAFF RECOMMENDATION:

1. APPROVAL of the Use Variance due primarily to the following circumstances:
  - The property has direct access to a relatively highly travelled arterial road.
  - Several acres of agricultural fields isolate the property from nearby residences.
  - The size of the property cannot accommodate typical agricultural uses, such as pasture area or large-scale crop farming.
  - **Recommended Stipulations**
    - Use of the property shall comply with Section 5.35 of the Unified Development Ordinance – Type 3 Home Business Standards (except for subsections C.1, E.1.a, E.1.b, and E.2 that apply to property including a residence).

- Written approval from INDOT for use of the existing driveway for a commercial use.
2. **APPROVAL of the Development Standards Variances** primarily because the relatively small size of the property limits the amount of buildable area, the property includes an existing driveway, and a commercial use would require a sign for identification.

### ***BZA 19-23– JOHN & MARY FISHER***

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**REQUEST: Special Exception** To allow for construction of a new single-family residence and residential accessory structures (new dwellings not permitted in the AI District).

**LOCATION:** Liberty Township at approximately 3550 S 800 E, Waldron.

**STAFF RECOMMENDATION: DENIAL** because the area of the tract chosen for residential development would eliminate, rather than protect, prime farmland. The proposal would also allow for development of a new residence in an area designated for agricultural use by the Comprehensive Plan. However, the Board should take into consideration the reasons that the petitioners chose the building site:

- The site sits on the highest point of the tract which would allow for proper drainage.
- The site would have easy access to both roads.
- The site currently includes a well.

**Use Variance**

**FINDINGS OF FACT BY THE SHELBY COUNTY BOARD OF ZONING APPEALS**

Applicant: Stephen Blair

Case # BZA 19-15

Location: 3199 E 875 S, Waldron, IN

The Shelby County Board of Zoning Appeals, having heard the application for variance of use described above, and all opposition from parties claiming to be adversely affected thereby, does now enter the following findings:

1. **The approval will not be injurious to the public health, safety, morals, and general welfare of the community.**
2. **The use and value of the area adjacent to the property included in the variance will be affected in a substantially adverse manner because** the placement of a Recreational Vehicle for use as long-term living quarters in a residential neighborhood would likely have a negative impact on adjacent property values.
3. **The need for the variance does not arise from some condition peculiar to the property involved because** no evident condition particular to the property would prevent residential development in compliance with the Unified Development Ordinance.
4. **The strict application of the terms of the Zoning Ordinance will not constitute an unnecessary hardship if applied to the property for which variance is sought because** no evident condition particular to the property would prevent residential development in compliance with the Unified Development Ordinance.
5. **The approval does interfere substantially with the Comprehensive Plan because** the proposal would interfere with the provisions identified in the Plan for agricultural residential areas because the proposed use is not a single-family residence and would not be compatible with the natural setting.

Based on the findings described above, the Board does now **deny** this application. So ordered this 9<sup>th</sup> day of July, 2019.

Shelby County Board of Zoning Appeals

By: \_\_\_\_\_  
Kevin Carson, Chairperson

Attest: \_\_\_\_\_  
Jim Douglas, Secretary

# Staff Report

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CASE NUMBER: BZA 19-21  
CASE NAME: GARY & JANE LARKEY – USE VARIANCE

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## ***CASE SUMMARY***

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**REQUEST:** Variance of Use to allow for an Event Venue in the A1 (Conservation Agricultural) District.

**LOCATION:** Moral Township at 8609 W 1200 N, New Palestine.

**STAFF RECOMMENDATION:** APPROVAL primarily because the location of the event venue in the center of an 80-acre agricultural field allows for a low-intensity commercial use that would not pose a nuisance to adjacent residential properties.

### **Recommended Stipulations**

- A State Design Release shall be obtained and any improvements to the barn required by the State shall be completed prior to use of the building for a public event venue.
- Written approval from the State Health Department shall be obtained and any improvements to the property required by the State shall be completed prior to use of the property for public events.

## **PROPERTY DESCRIPTION**

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**Property Size:** approximately 4.5 acres.

**Property Improvements:** Single-family residence, three barns, and four silos.

**Surrounding Development:** Single-family residences at a density of approximately one lot per 5.5-acres and cropland.

**Zoning Classification:** A1 (Conservation Agricultural) – Per the UDO the district is established for the protection of agricultural areas and buildings associated with agricultural production. The district is intended for low-intensity agricultural operations. When making decisions, the BZA should protect the integrity of land and operations within the District.

**Comprehensive Plan Future Land Use:** Agricultural Residential - Agricultural residential areas are intended to include only single-family homes. Accessory structures may also occur in these areas as long as adequate off-street parking is provided and the scale, function and design of the structures is compatible. These areas typically contain minimal infrastructure. Generally, these areas are served by individual wells and septic systems.

## **CASE DESCRIPTION**

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- The petitioners plan to use an existing historical barn primarily for weddings.
- The petitioners' statement of intent includes the following:
  - Hours of Operation: Weekdays 9AM – 10PM; Weekends 9AM – 11PM.

- Maximum of 250 guests per event.
  - Utilize catering services and vendors on the day of events. Alcohol provided. No food prepared on site.
  - One 4' X 6' sign at entrance to property.
  - Disposal of waste within 24 hours of each event.
- The petitioners stated that they will use the front yard for parking.
  - The petitioners stated that the barn will have running water and that they will utilize a portable restroom trailer for events.
  - The petitioners will continue to use the property for agricultural purposes when not in use for events.
  - The Shelby County Health Department has requested that the petitioners obtain approval from the State Health Department for water and waste disposal systems prior to use of the barn for public events.
  - The Shelby County Building Inspector has requested that the petitioners obtain a State Design Release prior to use of the barn for public events.

**STAFF ANALYSIS OF FINDING OF FACTS - USE VARIANCE**

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

Staff Analysis: Review and approval of the proposed event venue by the State Division of Fire and Building Safety and State Department of Health would ensure that the approval would not impact the public health, safety, morals, and general welfare.

**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 barn is located over five-hundred feet from the nearest residential property. The appearance of the property would not change. Therefore, noise and aesthetics of the property would not impact the use and value of adjacent residential properties.

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

Staff Analysis: The location of the barn in the center of an 80-acre agricultural field allows for a low-intensity commercial use that would not pose a nuisance to adjacent residential properties.

**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 a low-intensity commercial use that the property can support, and which would not pose a nuisance to adjacent property.

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

Staff Analysis: The Plan encourages agritourism as a future use in agricultural areas. The proposed use would provide a venue for the public to enjoy the agricultural character of the property and surrounding area. The proposed use can be adequately served by State approved well and septic, and county roads.

APPLICANT/OWNER INFORMATION

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Applicant: Gary & Jane Larkey Trust  
8943 W 1200 N  
New Palestine, IN 46163

Owner: Same

**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: Event Venue

2. Days & Hours of Operation: Week days 9 AM - 10 pm  
Weekends 9 AM - 11 PM Spring, summer, fall

3. Maximum Number of Customers per Day/Week/Month: 250 max per event

4. Type and Frequency of Deliveries: Vendors - day of event

5. Description of any Outdoor Storage: no additional

6. Description, Size, and Placement of any Signage: Decorative sign at  
entrance, about 4'x6'

7. Description of Waste Disposal: gathered and disposed of within  
24 hours of event

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

**USE VARIANCE  
FINDINGS OF FACT**

Applicant: Gary + Jane Larkey

Case #: \_\_\_\_\_

Location: 8109 W 1200 N, New Palestine, IN 46163

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.

Approval will have little to no impact on general welfare of 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.

There is significant space from venue to adjacent properties. Site will be professionally managed and maintained. Potential increase in traffic at time of event, but overall insignificant.

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.

Practical use of the property will be unchanged. It will continue to be used as a functioning farm when not in use for events.

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.

N/A This will add to the aesthetic value of the property.

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

This property is and will continue to be agricultural. Use of the facility for events will not interfere with that purpose.



- OP Open Space and Parks
- A1 Conservation Agricultural
- A2 Agricultural
- A3 Intense Agricultural
- A4 Agricultural Commercial
- RE Residential Estate
- R1 Single-Family Residential
- R2 Single-Family Residential
- VR Village Residential
- M1 Multiple-Family Residential
- M2 Multiple-Family Residential
- MP Manufactured Home Park
- VM Village Mixed Use
- IS Institutional
- C1 Neighborhood Commercial
- C2 Highway Commercial
- I1 Low Intensity Industrial
- I2 High Intensity Industrial
- HI High Impact

## Staff Report

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CASE NUMBER: BZA 19-22  
CASE NAME: JACOB BRATTAIN – USE & DEVELOPMENT STANDARDS VARIANCES

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### CASE SUMMARY

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#### REQUESTS:

1. Variance of Use to allow for a small construction and property maintenance business and possible similar future commercial uses in the A1 (Conservation Agricultural) District.
2. Variances of Development Standards to allow for:
  - i. A primary structure 35 ft from the proposed SR 9 right-of-way line, 15 ft from the north property line, and 25 ft from the south property line (minimum 50-foot front setback & 40-foot side setbacks required);
  - ii. An accessory structure 5 ft from the rear property line (10-foot rear setback required);
  - iii. Lot coverage exceeding 15%;
  - iv. Use of an existing driveway with a maximum width of about 60 ft and located 5 ft from the south property line (maximum 40-foot width permitted and 10-foot setback required);
  - v. A wall sign not to exceed 10 sq ft in area (commercial signs not permitted in the A1 District).

LOCATION: Marion Township at the address 6082 N SR 9, Shelbyville.

#### STAFF RECOMMENDATION:

1. **APPROVAL of the Use Variance** due primarily to the following circumstances:
  - The property has direct access to a relatively highly travelled arterial road.
  - Several acres of agricultural fields isolate the property from nearby residences.
  - The size of the property cannot accommodate typical agricultural uses, such as pasture area or large-scale crop farming.
  - **Recommended Stipulations**
    - Use of the property shall comply with Section 5.35 of the Unified Development Ordinance – Type 3 Home Business Standards (except for subsections C.1, E.1.a, E.1.b, and E.2 that apply to property including a residence).
    - Written approval from INDOT for use of the existing driveway for a commercial use.
2. **APPROVAL of the Development Standards Variances** primarily because the relatively small size of the property limits the amount of buildable area, the property includes an existing driveway, and a commercial use would require a sign for identification.

#### PROPERTY DESCRIPTION

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Property Size: Approximately 0.32 acres.

Property Improvements: Vacant.

Surrounding Development: Cropland.

Zoning Classification: A1 (Conservation Agricultural) – established for the protection of agricultural areas and buildings associated with agriculture. Intended for low intensity general agricultural operations. The BZA should protect the integrity of land and operations within the A1 District.

Comprehensive Plan Future Land Use: Agriculture - traditional farming practices as well as accessory residential and other agriculture related uses occur within this designation. This land use category is intended to preserve the existing rural character of the area. Facilities in agricultural areas should promote the rural character, whether using traditional construction and materials or employing modern agricultural technologies.

#### INTENT OF DEVELOPMENT STANDARDS ORDINANCE REQUIREMENTS

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- i. The setback from public road right-of-way provides for open space, prevents traffic hazards due to structures constructed too close to the road, and provides area for future acquisition of right-of-way.
- ii. Side and rear setback requirements provide for open space, provide for privacy between properties, ensure adequate separation of structures, and reduce the likelihood of accidentally building over a property line.
- iii. Lot coverage standards provide for open space, adequate area for on-site drainage, and consistent development patterns among adjacent properties.
- iv. Limiting the width of driveways prevents parking of vehicles on pavement adjoining the road. Vehicles parked on pavement adjoining the road could impede the line-of-site of moving vehicles or become an object of collision.
- v. Prohibiting signs in agricultural districts protects the rural character of the area.

#### CASE DESCRIPTION

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- The petitioner plans to construct a 40' X 60' pole structure on the property. In the future, the petitioner may also add small offices to the front of the building and construct storage units behind the building.
- The structures will not include water or sanitary facilities.
- An existing paved driveway would provide access to the site from SR 9.
- The petitioner initially plans to use the structure to store materials related to his personal property rehabilitation projects. Examples of stored materials include windows, cabinets, drywall, etc.

- The petitioner indicated that delivery of materials would occur less than five times per week and that in the future less than five customers per week would visit the site.
- The petitioner has also requested that approval of the variance allow for the future uses permitted by the Type 3 Home Based Business standards identified in the UDO. The petitioner has agreed to a stipulation that use of the property comply with the Type 3 Home Based Business standards.
- Summary of the Type 3 Home Based Business Standards
  - Permitted Uses: woodworking, small engine repair, lawn service, assembly of products, automobile repair, welding, contracting business, landscaping business, light manufacturing or a similar use as determined by the Zoning Administrator.
  - Direct retail sales prohibited.
  - Employees: Maximum of 10.
  - Outdoor storage of business materials prohibited (unless screened by a fence).
  - No commercial vehicles stored between 9:00PM and 5:00PM, unless stored behind the structure and no more than 14 operable vehicles at any one time.
  - Signage: One (1) wall sign not exceeding ten (10) square-feet in sign area.
- The UDO does permit a Type 3 Home Based Business in the A1 District, however, does not permit a Type 3 Home Based Business on the subject property without BZA approval of a use variance because the property does not include a home.

#### STAFF ANALYSIS OF FINDING OF FACTS - USE VARIANCE

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**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 structures would require site plan approval, building permits, and the structures must comply with all building codes before passing a final inspection. Use of the driveway for commercial purposes will require INDOT review and approval. Public customers will not regularly visit the site.

**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: Commercial use of the property will not interfere with continued use of adjacent property for agricultural purposes. Several acres of agricultural fields isolate the property from nearby residences, thereby eliminating any negative impacts on adjacent residential property.

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

Staff Analysis: The property has direct access to a relatively highly travelled arterial road. This location would provide easy access for future customers and the noise and traffic associated with the road lessens the desirability of use of the property for rural residential purposes. Due to its small size, the property cannot accommodate typical agricultural uses, such as pasture area or large-scale crop farming.

**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: Due to its small size, the property cannot accommodate typical agricultural uses, such as pasture area or large-scale crop farming.

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

Staff Analysis: A small commercial pole building and gravel parking area would not deviate from the agricultural character of the area.

**STAFF ANALYSIS OF FINDING OF FACTS – DEVELOPMENT STANDARDS VARIANCE**

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**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 structures would require site plan approval, building permits, and the structures must comply with all building codes before passing a final inspection. Use of the driveway for commercial purposes will require INDOT review and approval. A small sign would have no foreseeable impact on the public. Public customers will not regularly visit the site.

**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: Commercial use of the property will not interfere with continued use of adjacent property for agricultural purposes.

**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 relatively small size of the property limits the amount of buildable area. The new use would utilize an existing driveway. Commercial uses require a sign for identification purposes.

**APPLICANT/OWNER INFORMATION**

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Applicant:	Jacob Brattain 4412 N Morrystown Rd. Shelbyville, IN 46176	Owner:	Same
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# Home Business Standards (HB)

## 5.35 HB-03: Type 3 Home Business Standards

This Home Business Standards section applies to the following zoning districts:

**A1** **A2** **A3**

The following standards apply:

- A. Permits: All Type 3 Home Businesses shall obtain a Land Use Certificate.
- B. Permissible Home Businesses:
  - 1. Permitted: The Type 3 Home Business shall be limited to woodworking, small engine repair, lawn service, assembly of products, automobile repair, welding, contracting business, landscaping business, light manufacturing or a similar use as determined by the Zoning Administrator. Use of the property or home for permitted agricultural land uses shall not be considered a Type 3 Home Business.
  - 2. Prohibited: The Type 3 Home Business shall not include any kind of direct retail sales.
  - 3. Discretion: Businesses not specifically listed above shall be interpreted by the Zoning Administrator as to whether the business is permitted as a home business or not.
- C. Personnel:
  - 1. Residency: The operator of the Type 3 Home Business shall reside in the house.
  - 2. Employees: Up to ten (10) employees may be employed by and work on site.
- D. Operations:
  - 1. Nuisance: The Type 3 Home Business shall not generate offensive noise, vibration, smoke, odors, dust, heat, glare, or electrical disturbances.
  - 2. Hours: The hours of operation of the Type 3 Home Business shall not interfere with the use and enjoyment of the rural area in which it is located.
- E. Design:
  - 1. Primary Structure:
    - a. The office component of the Type 3 Home Business may be operated in the primary structure (the home).
    - b. The Type 3 Home Business shall not exceed five percent (5%) of the square footage of the primary structure.
    - c. There shall be no evidence of the Type 3 Home Business from alterations to the exterior of the residence. However, the character of the property may show minimum evidence of its business use, including: exterior storage of materials, vehicles or equipment used in the Type 3 Home Business.
  - 2. Accessory Structure:
    - a. The Type 3 Home Business shall be primarily conducted within an accessory structure
    - b. The Type 3 Home Business may consume one hundred percent (100%) of the square footage of the accessory structure.
  - 3. Parking and Loading:
    - a. All off-street parking or loading facilities shall meet the requirements of the applicable zoning district.
    - b. No part of a minimum required yard shall be used for off-street parking or loading purposes.
    - c. There shall be no more than fourteen (14) operable vehicles parked on the site at any time, including the vehicles used by residents of the home.

# Home Business Standards (HB)

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4. Outdoor Storage:
  - a. No commercial vehicles shall be parked or stored outside between 9:00 p.m. and 5:00 a.m. unless parked or stored behind the accessory structure use for the Type 3 Home Business.
  - b. No outdoor storage of products, materials, supplies, waste, scrap, or the like shall be permitted unless fully within an opaque fence enclosure with gate tall enough to screen the outdoor storage. Fences used for screening shall not exceed eight (8) feet in height. The fenced enclosure shall not exceed 1,000 square feet in area and shall meet all setback requirements for an accessory structure. A fenced enclosure for outdoor storage shall not be located forward of the accessory structure used for the Type 3 Home Business.
5. Signs: One (1) wall sign is permitted on the accessory structure and it shall not exceed ten (10) square feet in sign area. The wall sign shall be fully located within ten (10) feet above ground level. Materials shall be aesthetically compatible and complementary to the accessory structure, specifically to make sure the sign is subtle and consistent with residential and neighborhood character. No special lighting shall be permitted to illuminate the sign.

**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: Owner requests permission to build a pole barn structure on the Property and operate a small business located in the barn. The business would be limited to those permitted under the current zoning code for a Type 3 - Home Based Business.
  
2. Days & Hours of Operation: There will be no set hours of operation, but never before 6am or after 11 pm.
  
3. Maximum Number of Customers per Day/Week/Month: No retail sales will occur at the Property, and visits from customers will be less than 5 per week, if at all.
  
4. Type and Frequency of Deliveries: Less than 5 per week, often times none.
  
5. Description of any Outdoor Storage: Outdoor storage, if any, will be limited to those kept behind the structure and any fences, as required by Article 5.35(E)(4) of the Shelby County Zoning Ordinance.
  
6. Description, Size, and Placement of any Signage: Any signage will be restricted to those permitted under Article 5.35(E)(5) of the Shelby County Zoning Ordinance.
  
7. Description of Waste Disposal: Small on site dumpster, with dump frequency to be determined by usage, however never to be more than once per week.
  
8. Existing and/or Proposed Building and Site Improvements Pertaining to Proposed Use (ex. parking lot, landscaping, commercial upgrades to building, etc.): Owner proposes an inital 40x60 pole barn structure to be build on the Property. This will include a gravel parking lot around the building, and use the existing drive located on the Property. There is a possibility of adding small offices to the front of the structure, and additional storage units behind the barn.

**USE VARIANCE  
FINDINGS OF FACT**

Applicant: Jacob Brattain

Case #: \_\_\_\_\_

Location: 6082 N State Road 9, Shelbyville, IN 46176

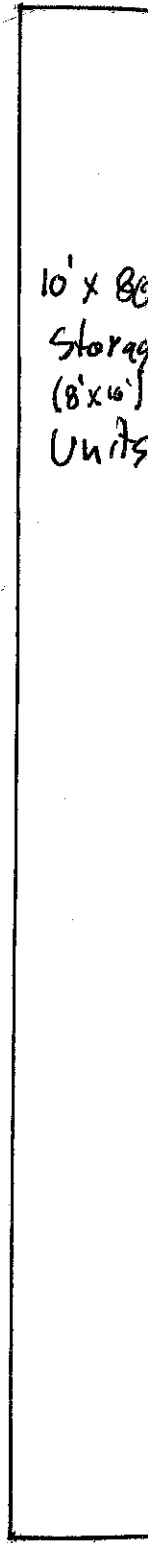
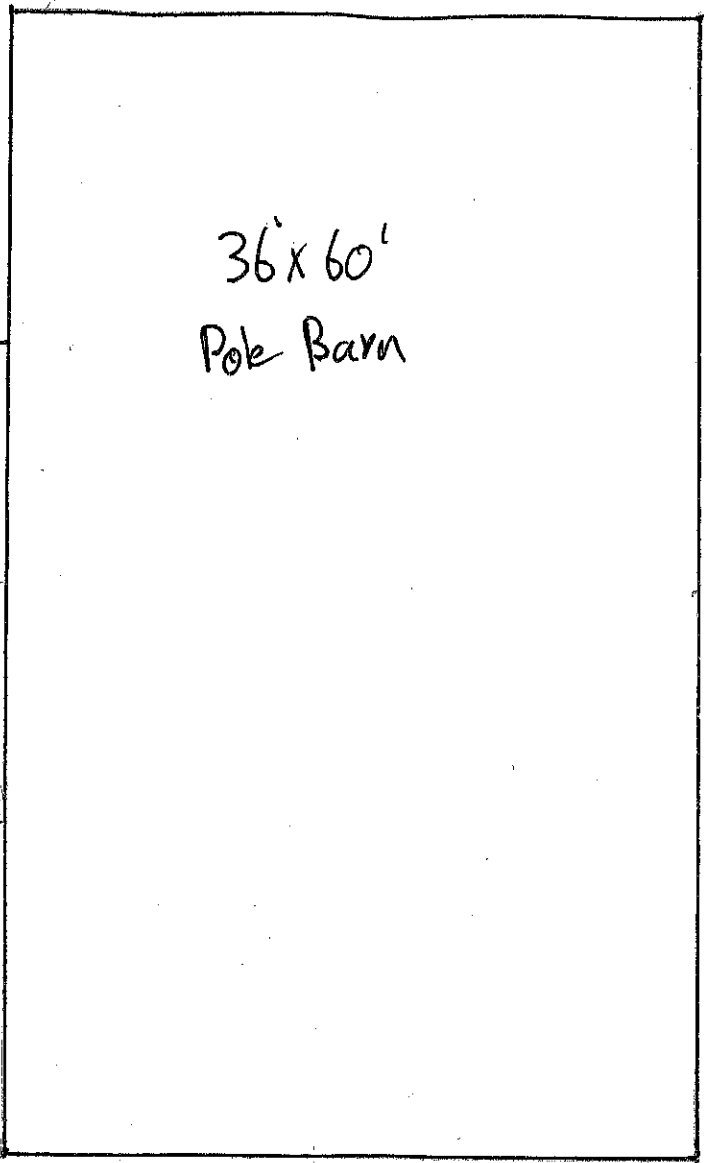
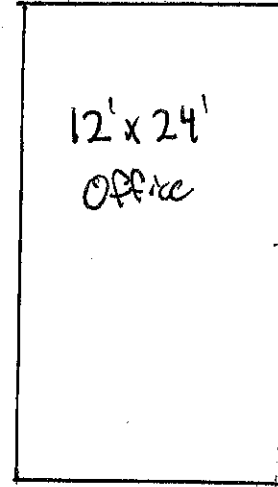
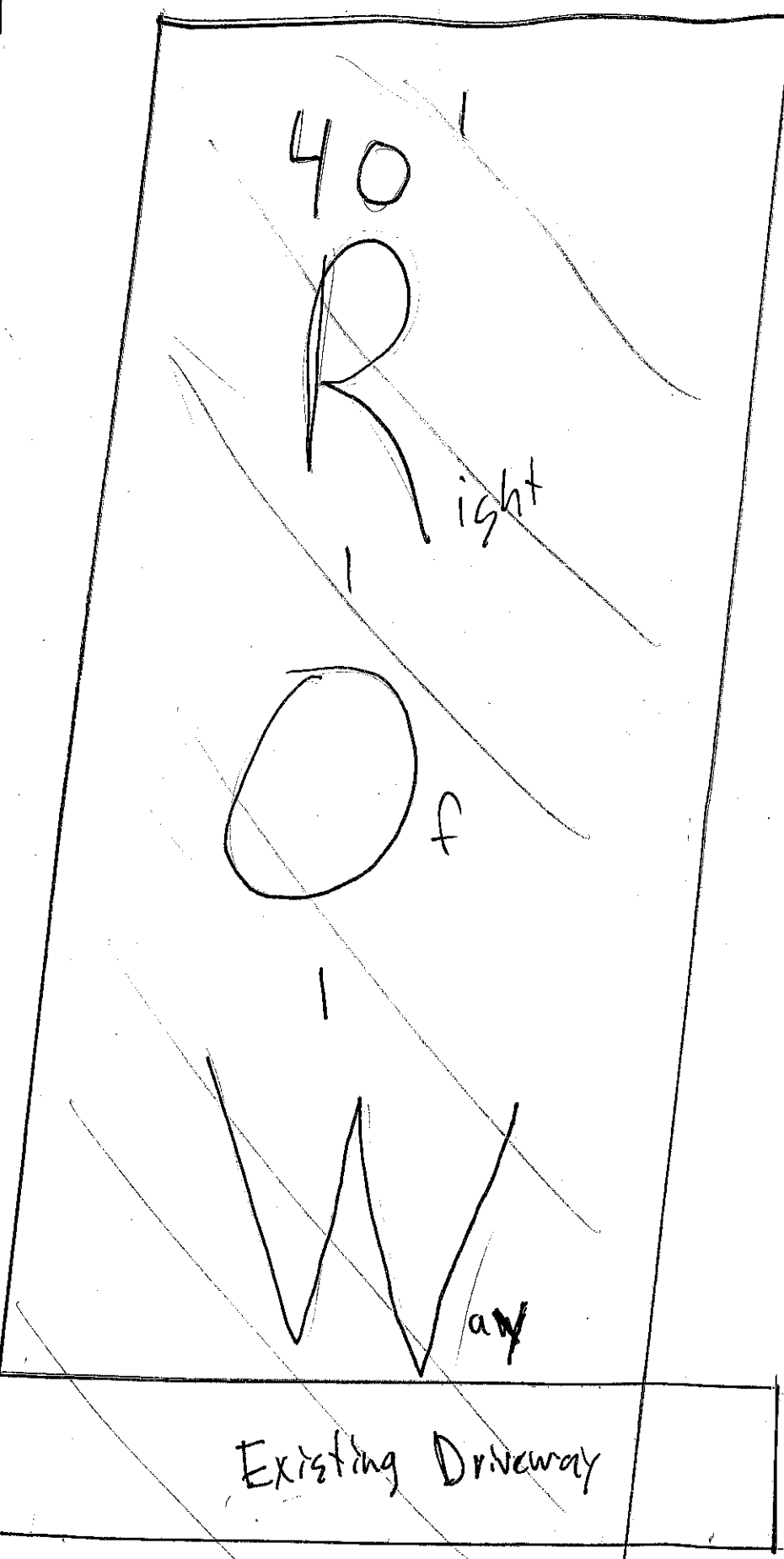
The Shelby County Board of Zoning Appeals must determine that the following criteria have been met in order to approve an application for a Use Variance. Using the lines provided, please explain how your request meets each of these criteria.

1. **General Welfare:** The approval will not be injurious to the public health, safety, and general welfare of the community.  
The requested use will not be harmful for Shelby County - there is an existing drive to the Property that was not an issue when the Property contained a homesite. There will be no additional pollution resulting from the Property under the proposed use, and there will be no excessive noise, traffic, or other disruptions. Any structures will be properly permitted and build to current building standards.
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 Property is surrounded by agricultural land, and adjacent properties have structures similar to that proposed at the Property. Additionally, there are many other businesses located in similar structures along State Road 9, both to the North and to the South of the Property. The structure would be kept clean and would not adversely affect adjacent property values.
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 Property is extremely small, and was the result of a previous subdivision when the Property housed a residential home. With the size, there is no room to install a proper septic system under current requirements, which prevents another residential structure on the Property. Without the ability to build a residential structure, an accessory structure is the next best use.
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.  
Again, the size of the Property restricts most uses, primarily because there is no room to install a proper septic system on the Property. Without the ability to provide bathrooms, the Property cannot be used for a residential lot. Additionally, the size limits the practicality of farming the ground, and almost any other productive uses.
5. **Comprehensive Plan:** The granting of the variance does not interfere substantially with the Comprehensive Plan.  
According to the Comprehensive Plan, the Property is located on a Secondary/Rural Arterial, with a proposed future use of Agricultural. Under current standards, businesses such as the one proposed at the Property, are permitted to be located in Agricultural zones.



- OP Open Space and Parks
- A1 Conservation Agricultural
- A2 Agricultural
- A3 Intense Agricultural
- A4 Agricultural Commercial
- RE Residential Estate
- R1 Single-Family Residential
- R2 Single-Family Residential
- VR Village Residential
- M1 Multiple-Family Residential
- M2 Multiple-Family Residential
- MP Manufactured Home Park
- VM Village Mixed Use
- IS Institutional
- C1 Neighborhood Commercial
- C2 Highway Commercial
- I1 Low Intensity Industrial
- I2 High Intensity Industrial
- HI High Impact

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# Staff Report

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CASE NUMBER: BZA 19-23  
CASE NAME: JOHN & MARY FISHER – SPECIAL EXCPETION

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## ***CASE SUMMARY***

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**REQUEST:** Special Exception- To allow for construction of a new single-family residence and residential accessory structures (new dwellings not permitted in the A1 District).

**LOCATION:** Liberty Township at approximately 3550 S 800 E, Waldron.

**STAFF RECOMMENDATION:** DENIAL because the area of the tract chosen for residential development would eliminate, rather than protect, prime farmland. The proposal would also allow for development of a new residence in an area designated for agricultural use by the Comprehensive Plan. However, the Board should take into consideration the reasons that the petitioners chose the building site:

- The site sits on the highest point of the tract which would allow for proper drainage.
- The site would have easy access to both roads.
- The site currently includes a well.

## **PROPERTY DESCRIPTION**

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**Property Size:** 22.5 acres.

**Property Improvements:** Cropland.

**Surrounding Development:** Primarily Cropland. Two single-family residences south of the lot.

**Zoning Classification:** A1 (Conservation Agricultural) – Per the UDO the district is established for the protection of agricultural areas and buildings associated with agricultural production. The district is intended for low-intensity agricultural operations. When making decisions, the BZA should protect the integrity of land and operations within the District.

**Comprehensive Plan Future Land Use:** Agriculture

- **Use** - Traditional farming practices as well as accessory residential and other agriculture related uses occur within this designation. Existing residential lots containing single-family housing units could also have agricultural related uses, such as stables and small-scale non-commercial food production and limited livestock production. Activities characterized as agritourism (farm trails, farmers' markets, and roadside stands) will find a home within this designation. This land use category is intended to preserve the existing rural character of the area.
- **Infrastructure** - Any development in these areas must be capable of being adequately served by well, septic or other appropriate waste treatment systems. County roads provide access for residents and also for public safety services such as police and fire. These County roads may also carry slow-moving, wide farm equipment between fields.
- **Design Features** - Facilities in agricultural areas should promote the rural character, whether using traditional construction and materials or employing modern agricultural technologies.

**PURPOSE OF UDO REQUIREMENT**

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The ordinance does not allow new dwellings in the A1 District to protect prime agricultural land from development.

**CASE DESCRIPTION**

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- The petitioners plan to construct a single-family residence and pole building on a 2.3-acre building site on the north end of the lot.
- The 2.3-acre building site would sit at the corner of S Shelby 800 E and W Rush 900 S.
- The 2.3-acre building site would be located on the highest point of the tract.
- The 2.3-acre building site is designated as Prime Farmland by the USDA Soil Survey. Most of the remaining portion of the tract is designated as Prime Farmland if Drained.
- Property owners typically create new residential lots in rural areas by rezoning the property to Residential Estate and creating a simple subdivision. However, the petitioners own the entire 22-acre tract and only plan to construct one house. Therefore, the zoning of the property will remain A1.

**STAFF ANALYSIS OF FINDING OF FACTS – SPECIAL EXCEPTION**

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**UDO Requirement:** The proposed special exception is consistent with the purpose of the zoning district and the Shelby County Comprehensive Plan.

Staff Analysis: Development of the proposed building site would eliminate, rather than protect, a significant agricultural area. The proposal would also allow for development of a new residence in an area designated for agricultural use by the Comprehensive Plan.

**UDO Requirement:** The proposed special exception will not be injurious to the public health, safety, morals, and general welfare of the community.

Staff Analysis: Construction of a driveway near the intersection of two roads could cause a traffic safety issue.

**UDO Requirement:** The proposed special exception is in harmony with all adjacent land uses.

Staff Analysis: Development of the property with only one single-family residence and associated accessory structures would not alter the rural character of the area.

**UDO Requirement:** The proposed special exception will not alter the character of the district

Staff Analysis: Development of the property with only one single-family residence and associated accessory structures would not alter the rural character of the area.

**UDO Requirement:** The proposed special exception will not substantially impact property value in an adverse manner.



Staff Analysis: Development of the property with one single-family residence and associated accessory structures would not have any perceivable impact on property values.

APPLICANT/OWNER INFORMATION

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Applicant: John & Mary Fisher  
3824 S 950 W  
Manilla, IN 46150

Owner: Same

USDA Soil Survey Maps

Prime Farmland



Green – Prime Farmland; Turquoise – Prime Farmland if Drained

Development of Dwellings with Basements



Green – Not Limited; Yellow – Somewhat limited; Red – Very Limited

**SPECIAL EXCEPTION  
FINDINGS OF FACT**

Applicant: John and Mary Fisher

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 Special Exception. Using the lines provided, please explain how your request meets each of these criteria.

1. **Comprehensive Plan:** The proposed special exception is consistent with the purpose of the zoning district and the Shelby County Comprehensive Plan.

The 2 acre section in the corner of the field will not interfere with the agricultural use of the ground.

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

No issues of public health or safety, road network safety, or pollution will occur from the proposed house and pole barn.

3. **Harmony:** The proposed special exception is in harmony with all adjacent land uses.

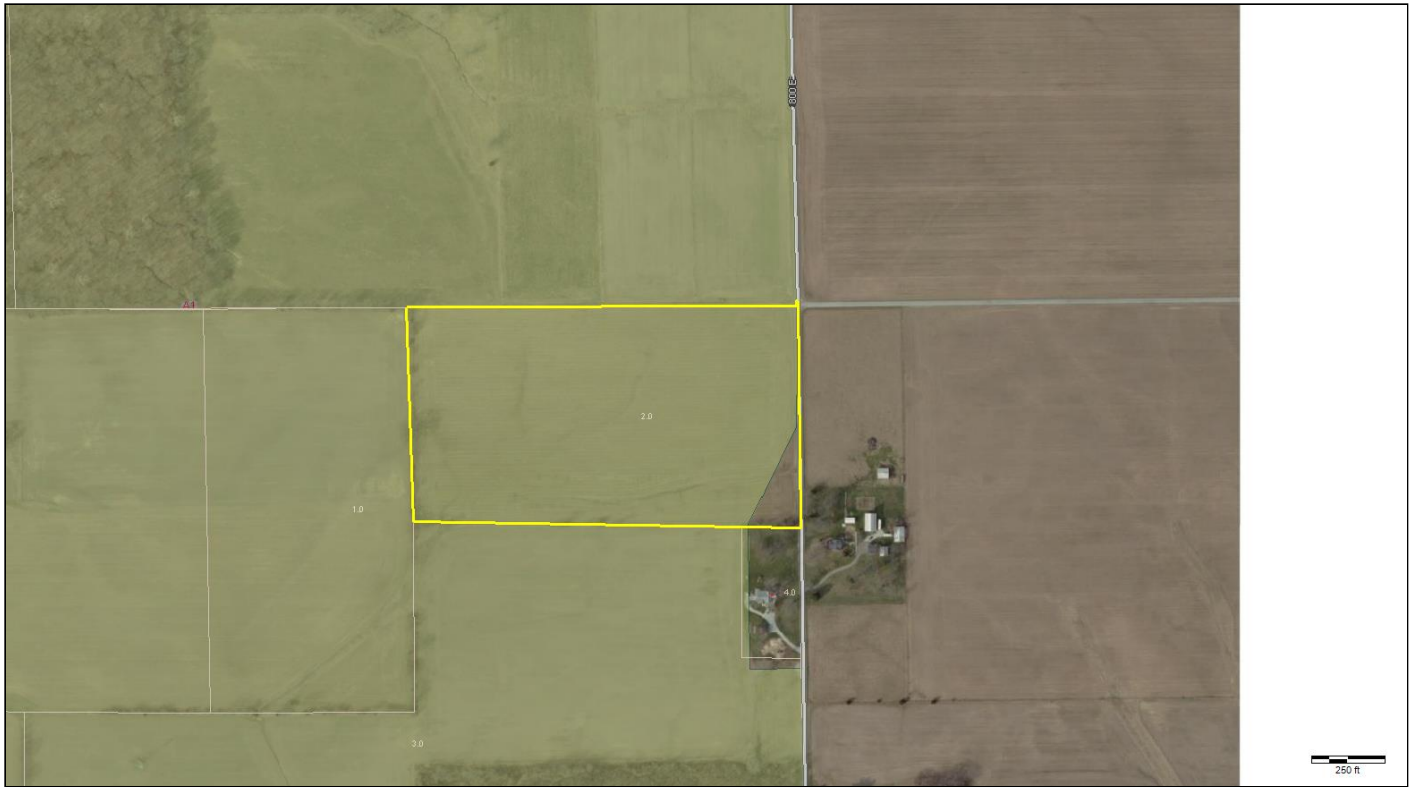
Similar size and structure homes exist on surrounding land. The house & barn will fit in with other homes.

4. **Character of the District:** The proposed special exception will not alter the character of the district.

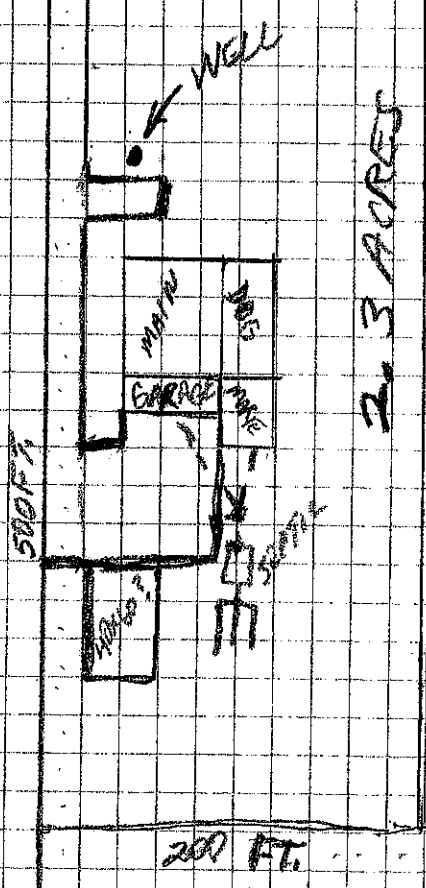
The 2 acre section for these structures will in no way alter the existing use of the remainder of the plot (agriculture)

5. **Property Value:** The proposed special exception will not substantially impact property value in an adverse manner.

The proposed house & barn will have no effect on surrounding property values.



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- M1 Multiple-Family Residential
- M2 Multiple-Family Residential
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- IS Institutional
- C1 Neighborhood Commercial
- C2 Highway Commercial
- I1 Low Intensity Industrial
- I2 High Intensity Industrial
- HI High Impact



(3500'S) (1000 W RUSH)  
(800 E ENERGY)

# Staff Report

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CASE NUMBER: VI9-12  
CASE NAME: TROY & CHERYLE AUGUSTINE – ZONING, BUILDING, & HEALTH  
DEPARTMENT CODE VIOLATIONS

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## *CASE SUMMARY*

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### VIOLATIONS:

1. Construction without an Improvement Location Permit, Building Permit, and Plumbing Permit.
2. Insulation of a Septic System without a septic permit.
3. Construction of a habitable structure not on a permanent foundation.
4. Construction of a structure less than 6-feet from another structure.
5. Possible other building code violations not apparent at the time of completion of the structure.

STRUCTURE DESCRIPTION: A 16'X24' structure on skids. The structure includes a sleeping area, bathroom, and kitchen area without plumbing.

LOCATION: Nobel Township at the address 10582 S 350 E, Flat Rock.

### TIMELINE OF EVENTS

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- Ms. Augustine contacted the Plan Commission with a concern that her contractor did not obtain the required permits. She indicated that the contractor had told her that he had talked to someone at the County about obtaining permits.
- Ms. Augustine set up a meeting with the Plan Commission building inspector on site. The inspector observed several code violations and determined that the structure could not come into compliance with building code because the walls would need to be completely removed in order to connect the structure to a permanent foundation.
- Ms. Augustine told the inspector that her mother/mother-in-law lived in the structure, however ate meals in the main house.
- The inspector noted that the quality of the workmanship overall appeared good and therefore requested that the owner complete minor improvements to render the structure safe for habitation, however it would not comply with building code (see inspector's comments on following pages).
- The Health Department sent a letter to the Augustines ordering that the structure remain uninhabitable until installation of an adequate septic system.
- Ms. Augustine provided text messages from the contractor. One message indicated that the contractor planned to contact the Plan Commission office to inquire about contractor registration. Another text message indicated less restrictions applied if the homeowner completed the work. She also provided the quote provided for the work. The quote did not include permit fees.

#### OPTIONS FOR CORRECTIVE ACTION

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1. Order that the structure come into compliance with building code. This would require relocating the structure at least 6-feet away from the house and rendering the structure permanently uninhabitable. Alternatively, the structure could be completely removed.
2. Fine Double the Permit Fee - \$1,100 (maximum permitted) with or without obtaining retroactive permits.
3. Both options 1 and 2.
4. Another remedy as determined by the BZA (note that UDO requires that the violator be given an option to remedy the violation prior to the assessment of additional fines or enforcement action).

#### APPLICANT/OWNER INFORMATION

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Owners: Troy & Cheryl Augustine  
10582 S 350 E  
Flat Rock, IN 47234

Contractor: K&B Remodeling, LLC  
Columbus, IN





Troy & Cheryl Augustine

105820S. 350 E.

Flat Rock

**Items to be performed.**

Attic access opening must be installed either thru the ceiling or thru the gable end on the outside to accommodate the ability to enter the attic area for future repairs and maintenance.

Screw in earth anchors on all four corners to stabilize the structure and help prevent it from moving.

The septic system is not in compliance with county codes. I reported my findings to the Shelby County Health Dept.

**\*\*\*NOTES\*\*\***

The structure is less than 6 feet away from the old existing structure. This is a code violation.

The structure is not on a permanent type of foundation. This is the reason for the screw in earth anchors.

All the electrical wiring appeared to be code compliant. All wires appeared to be sized properly for the breakers that they were serving.

There is skirting around the perimeter of the building to prevent animals etc. from being able to access the area under the building.

The quality of the workmanship appears to be good.



The structure has a 3/0 x 6/8 entry door which makes the sleeping area code compliant for means of EGRESS.

# SHELBY COUNTY HEALTH DEPARTMENT

1600 EAST STATE ROAD 44, SUITE B  
SHELBYVILLE, INDIANA 46176

317-392-6470  
317-392-6472-fax

June 19, 2019

To: Troy & Cheryl Augustine  
10582 S 350 East  
Flat Rock, IN 47234

Re: Unpermitted septic installation

Hello Mr. & Mrs. Augustine

It was brought to our attention that a septic system was installed for a "Mother-In-Law House" located on your property at 10582 S 350 East, Pleasant Grove Lot 15. No application was submitted, no septic permit was issued and there was no inspection of the installed system. Indiana code 410 IAC 6-8.3-53 (a) requires a written permit prior to construction of a residence.

At this time the Shelby County Health Department is condemning the "Mother-In-Law House" and it must remain uninhabited until such a time as a septic system is installed for it or an addition is made to the existing house septic. The mother can live inside the existing home until the situation is resolved.

You have 3 choices:

- 1) Have a septic system installed separately for the house. This will require the soil to be tested and a plan to be submitted that will meet the septic requirements.

Or

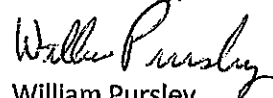
- 2) Add to the existing septic system. A 1250 gal. Flood Dosing tank and pump will need to be installed. One 100 ft. of Infiltrator pipe will need to be added to the existing septic field. The D-box may have to be upsized. You can continue using the existing 1000 gal. septic tank.

Or

- 3) Remove all plumbing from the structure and not have any water going to the building.

Please contact our office as soon as possible to avoid any further actions.

Professionally,



William Pursley,  
Environmental Technician