

Shelby County
Board of Zoning Appeals

August 13, 2019 at 7:00 PM

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MEETING AGENDA

Shelby County Board of Zoning Appeals
August 13, 2019, 7:00 P.M.

CALL TO ORDER

ROLL CALL

APPROVAL OF MINUTES

Minutes from the July 9, 2019 meeting.

OLD BUSINESS

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

NEW BUSINESS

BZA 19-24 – DEWELL KIRBY JR.: DEVELOPMENT STANDARDS VARIANCE

BZA 19-25 – ALAN L. FISHER: DEVELOPMENT STANDARDS VARIANCE

DISCUSSION

Establishment of a Variance Hearing Officer

ADJOURNMENT

The next regular meeting of the Shelby County Board of Zoning Appeals is scheduled for Tuesday, September 10, 2019 at 7:00 PM.

Summary of Cases

BZA 19-21 – GARY & JANE LARKEY

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.

BZA 19-24 – DEWELL KIRBY JR.

REQUEST: Variance of Development Standards to allow for a gravel driveway (paved driveways required for all new dwellings in the R1 (Single-Family Residential) District).

LOCATION: Van Buren Township at 940 W 1090 N, Fountaintown. Within the Candlelight Village subdivision.

STAFF RECOMMENDATION: APPROVAL because many of the properties in the subdivision have a gravel driveway.

BZA 19-25 – ALAN L. FISHER

REQUEST: Variance of Development Standards to allow for two horses in a pasturage area of one-half acre (maximum of one horse per two pasturage acres permitted in the A2 District).

LOCATION: Moral Township at 7146 W 700 N, Fairland.

STAFF RECOMMENDATION: APPROVAL primarily because:

- A large pasture area is likely not needed because the horses do not graze, but rather eat food provided by the petitioner.
- Staff visited the property and found the property well maintained; The Health Department has not found any health code violations.
- The keeping of two horses does not conflict with the rural character of the area.

RECOMMENDED STIPULATION: The property shall not include more than two horses, unless the property comes into compliance with all standards related to pastured farm animals indicated in the Unified Development Ordinance.

Staff Report

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

CASE SUMMARY

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

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

- 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

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

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

Owner: Same



- 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

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.

Staff Report

CASE NUMBER: BZA 19-24
CASE NAME: DEWELL V KIRBY JR. – DEVELOPMENT STANDARDS VARIANCE

CASE SUMMARY

REQUEST: Variance of Development Standards to allow for a gravel driveway (paved driveways required for all new dwellings in the R1 (Single-Family Residential) District.

LOCATION: Van Buren Township at 940 W 1090 N, Fountaintown. Within the Candlelight Village subdivision.

STAFF RECOMMENDATION: APPROVAL because many of the properties in the subdivision have a gravel driveway.

PROPERTY DESCRIPTION

Property Size: 4.29 acres.

Property Improvements: A barn.

Surrounding Development: Single-family residences on 1/3-acre lots to the north, south, and west. Vacant property to the east.

Zoning Classification: R1 (Single-Family Residential) – per the UDO, this district is established for single-family, detached medium to large sized homes on medium to large sized lots.

Comprehensive Plan Future Land Use: Agricultural Residential – Per the Comprehensive Plan, agricultural residential developments should be designed to be compatible with their natural and agricultural surroundings.

INTENT OF ORDINANCE REQUIREMENT

The UDO requires paved driveways in the R1 District to protect the character of medium to large sized lot neighborhoods. Paved driveways also prevent the accumulation of large quantities of dirt and dust from multiple driveways in the public road.

CASE DESCRIPTION

- The petitioner has obtained site plan approval and permits to renovate the existing barn into a single-family residence.
- The petitioner plans to utilize an existing gravel driveway to access the property.
- The zoning ordinance in effect at the time of the development of the subdivision may have permitted gravel driveways. However, per the current UDO, a change in use of a property results in the loss of legal nonconforming status.

STAFF ANALYSIS OF FINDING OF FACTS – DEVELOPMENT STANDARDS VARIANCE

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

Staff Analysis: A private gravel driveway will have no impact on the general public.

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: Many properties in the subdivision include a gravel driveway, therefore a gravel driveway would not negatively impact the character of the area.

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

Staff Analysis: A strict application of the Ordinance would prohibit use of a gravel driveway consistent with the character of the area.

APPLICANT/OWNER INFORMATION

Applicant: Dewell V Kirby Jr.
940 W 1090 N
Fountaintown, IN 46130

Owner: Same



Fiber Optic Facilities
 COMPANY:

- MCI
- RUSH SHELBY E
- VERIZON & QUE
- WILTEL

Natural Gas Distribution
 COMPANY:

- FOUNTAIN TOWN

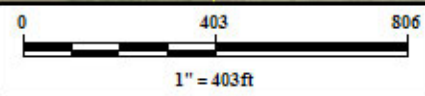
Shelby Co Zoning
 Feature Name:

- a1
- a2
- r1
- re

- Water
- County Boundary
- Well
- Parcels
- Well Head Protection

- LandMarks
- ~ Culvert Inventory
- Addresses

- Water
- Septic Trench
- Surface Drain
- Roads
- - - Railroads
- Highways
- Electrical Lines



**DEVELOPMENT STANDARDS VARIANCE
FINDINGS OF FACT**

Applicant: Dewell V. Kirby JR.

Case #: _____

Location: 940 West 1090 North Fountain Town IN 46130

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.

Very nice well built Pool Barn by High end CO. NAME OF F.B.I.
8.5 WALLS, INSULATED, CONCRETE, # 8 WINDOWS DOUBLE PANE, 200 AMP ELECTRICAL
DIGITAL METER, NATURAL GAS AVAL FURNACES, NEW WELL, GRAVEL DRIVE, 4.29
ACRES. ALL LIGHTING, EVERYTHING IN WORKING ORDER, GOOD SHAPE!

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.

NOTHING TO NORTH, NOTHING TO THE WEST, THE SOUTH, DRIVEWAY GATES
NEW WELL DRILLED, SEPTIC TO THE EAST AND THERE IS 4 ACRES MOWED
FIELD. BROUGHT # 5 LETTERS FROM NEIGHBORS AROUND ME AND
ARE IN MY FAVOR. HAVE NO ISSUES WITH WHAT I'M TRYING TO ACCOMPLISH!

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.

NO IN MY OPINION MY PROPOSAL WOULD NOT AFFECT ANYONE IN
MY VICINITY!

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.)

Staff Report

CASE NUMBER: BZA 19-25
CASE NAME: ALAN L FISHER – DEVELOPMENT STANDARDS VARIANCE

CASE SUMMARY

REQUEST: Variance of Development Standards to allow for two horses in a pasturage area of one-half acre (maximum of one horse per two pasturage acres permitted in the A2 District).

LOCATION: Moral Township at 7146 W 700 N, Fairland.

STAFF RECOMMENDATION: APPROVAL primarily because:

- A large pasture area is likely not needed because the horses do not graze, but rather eat food provided by the petitioner.
- Staff visited the property and found the property well maintained; The Health Department has not found any health code violations.
- The keeping of two horses does not conflict with the rural character of the area.

RECOMMENDED STIPULATION: The property shall not include more than two horses, unless the property comes into compliance with all standards related to pastured farm animals indicated in the Unified Development Ordinance.

PROPERTY DESCRIPTION

Property Size: 9 acres.

Property Improvements: Single-family residence, detached garage, shed, lean-to.

Surrounding Development: Primarily single-family residences on lots over one acre.

Zoning Classification: A2 (Agricultural) – per the UDO, this district is established for general agricultural areas and buildings associated with agricultural production. The BZA should protect the integrity of land and operations within the district.

Comprehensive Plan Future Land Use: Suburban Residential – Per the Comprehensive Plan, suburban residential primarily includes single-family detached residences in neighborhoods. Neighborhoods are characterized by a range of densities and may include neighborhood parks and community facilities such as churches and schools.

INTENT OF ORDINANCE REQUIREMENT

A minimum pasturage area ensures that animals have adequate area for grazing and protects the character of agricultural areas.

CASE DESCRIPTION

- The petitioner currently owns three horses but plans to remove one horse from the property. The petitioner does not plan to acquire any additional horses.

- The property includes a one-half acre pasture area enclosed by an agricultural electric fence. The fence adjoins the east property line. The UDO permits fences on the property line.
- The petitioner's site plan indicates that they will block off an area of the pasture adjoining the east property line near the neighbor's residence.
- The horses do not graze in the pasture area but rather eat food provided by the petitioner. A lean-to provides shelter for the horses.
- In early 2019 Staff received a complaint from the adjoining property owner to the east regarding an accumulation of animal waste in proximity to the property line. The petitioner stated that they owned horses when the neighbor moved to the area.
- Staff sent the petitioner a violation letter in early 2019 regarding the lack of pasture area. The petitioner chose to apply for a variance because they use the remaining portion of the property for crop production.
- The UDO does not regulate animal waste. The Health Department has visited the property and did not find any health code violations.
- Staff visited the property on July 23, 2019 and found the property well maintained. The petitioner did not have prior knowledge of the timing of the site visit.

STAFF ANALYSIS OF FINDING OF FACTS – DEVELOPMENT STANDARDS VARIANCE

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

Staff Analysis: The Health Department has visited the property and did not find any health code violations. Therefore, the keeping of two horses should not impact the general public.

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 Health Department has visited the property and did not find any health code violations. The property appears well maintained. Therefore, the keeping of two horses should not produce any significant odor or materials that would impact adjacent property. The keeping of two horses does not conflict with the rural character of the area.

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 restricts use of the property for agricultural purposes.

APPLICANT/OWNER INFORMATION

Applicant/Owner: Alan L. Fisher
7146 W 700 N
Fairland, IN 46126

Applicant's Representative: Hilda Fisher
7067 W 700 N
Fairland, IN 46126



View of horses, lean-to shelter, and fenced area



Neighboring house and east property line

London Heights

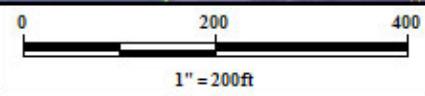
398350 sqft
0.01 sqmi
9.14 ac

- Fiber Optic Facilities**
COMPANY:
- Quest Fiberoptic
 - RUSH SHELBY E
 - Sprint Fiberoptic

- Shelby Co Zoning**
Feature Name:
- a1
 - a2
 - r1
 - re
 - vr

- Water
- County Boundary
- Well
- Parcels
- Roads
- Well Head Protection
- LandMarks
- Culvert Inventory
- Inactive (Raised) Add
- Addresses

- Water
- Septic Trench
- Surface Drain
- Parcels
- Roads
- Roads to be Deve
- Railroads
- Highways
- Interstate Ramps
- Electrical Lines



DEVELOPMENT STANDARDS VARIANCE
FINDINGS OF FACT

Applicant: AIAN L FISHER

Case #: _____

Location: 7140 W 700 N FAIRLAND, IN 46130

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.

They are in an electrical fence that is always plugged in.

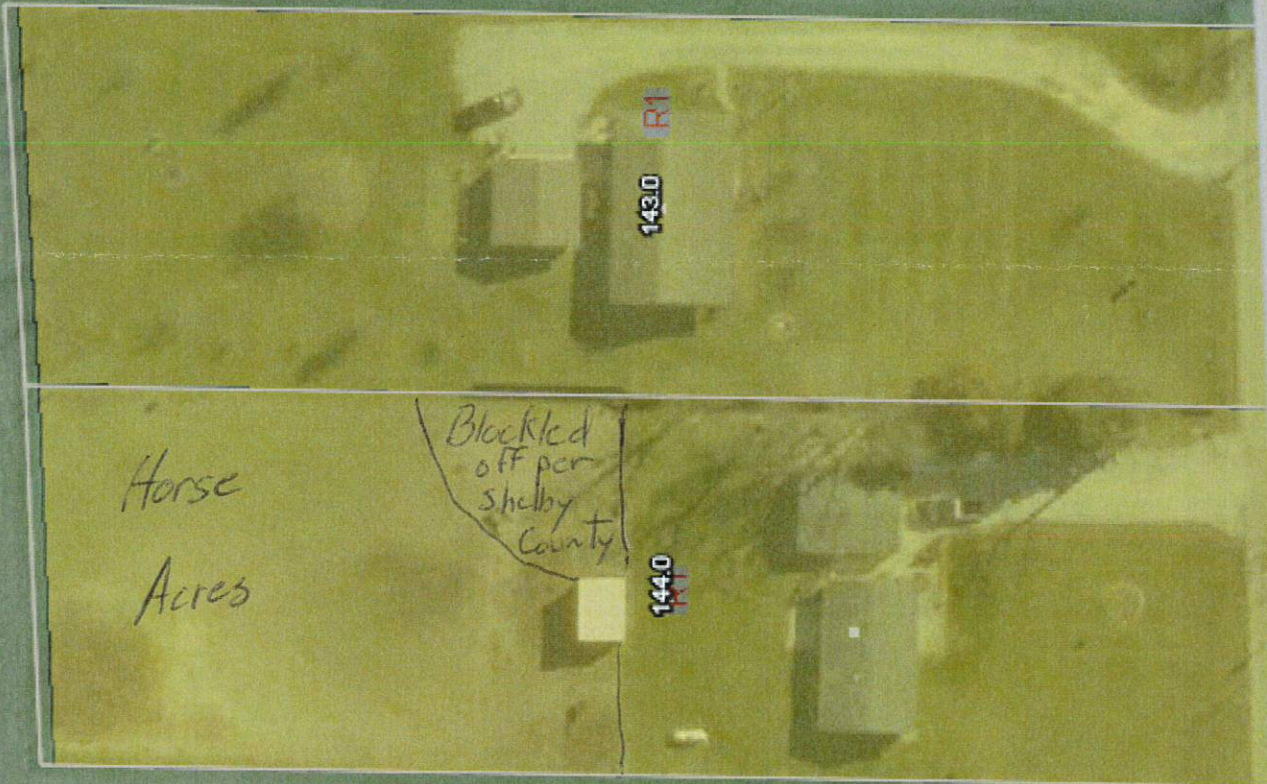
2. **Adjacent Property:** The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner.

Pasture is picked up and well maintained; weedeating, mowing, etc

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.

Other people have farm animals on property that isn't up to the approval. Other animals around are on smaller areas.

A2



700N