Shelby County Board of Zoning Appeals

September 13, 2022 at 7:00 PM

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MEETING AGENDA

Shelby County Board of Zoning Appeals September 13, 2022, 7:00 P.M.

CALL TO ORDER

ROLL CALL

APPROVAL OF MINUTES

Minutes from the August 9, 2022 meeting.

BUSINESS CONTINUED TO OCTOBER 11, 2022

BZA 22-31 – PANJAB GROUP, INC.: USE & DEVELOPMENT STANDARDS VARIANCES. Located at 6925 S Carroll Rd, Indianapolis, Moral Township.

BZA 22-35 – WILLIAM LEE & CAROL JEAN RITCHIE: SPECIAL EXCEPTION & DEVELOPMENT STANDARDS VARIANCES. Located at 385 W Carey St, Fairland (previously 4771 W 400 N, Fairland), Brandywine Township.

V22-10 – BALDEV S VIRK: ZONING VIOLATION. Located at 7165 W Old ST RD 252, Edinburgh, Jackson Township.*

NEW BUSINESS

BZA 22-27 – BRUCE METZGER: DEVELOPMENT STANDARDS VARIANCES. Located at 11174 N 460 W, New Palestine, Moral Township.

V21-08 – JOHN H & CYNTHIA S DEMARTINO: ZONING VIOLATION. Located at 2027 W Washington Ave, Addison Township.*

DISCUSSION

APPROVED HEARING OFFICER CASES

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

BZA 22-28 – RAMON AREVALO: DEVELOPMENT STANDARDS VARIANCES. Located at 1693 N Michigan Rd, Shelbyville, Addison Township. *Approved August 23, 2022.*

BZA 22-28 – CHRIS COLGLAZIER: DEVELOPMENT STANDARDS VARIANCES. Located east of and adjoining 8975 N 150 E, Morristown, Van Buren Township. *Approved August 23, 2022.*

BZA 22-34 - ALVA KEEHN: DEVELOPMENT STANDARDS VARIANCE. Located at 8438 W 800 N, Fairland,

Moral Township. Approved September 8, 2022.

ADJOURNMENT

The next regular meeting of the Shelby County Board of Zoning Appeals is scheduled for Tuesday, October 11, 2022 at 7:00 PM.

*Note that zoning violation cases are not public hearings, however the Board may choose to accept comment from the property owner, complainant(s), and/or members of the public.

**Agenda Revised 9/13/22

Property Details

Location: 11174 N 460 W, New Palestine, Moral Township.

Property Size: 0.73-acres.

Current Land Use: Single-Family Residential.

Zoning Classification:

R1 (Single-Family Residential)

Intent: This district is established for single-family detached, medium to large sized homes on medium to large sized lots.

<u>Development Standards</u>: Promote lowimpact development in harmony with a natural setting.

Future Land Use per Comp Plan Agriculture

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.

Surrounding Development

	Zoning	Land Use
North	R1	Single-Family Res.
South	R1	Single-Family Res.
East	A1	Cropland
West	R1	Single-Family Res.

Staff Report

Case Number: BZA 22-27

Case Name: Bruce Metzger – Development Standards

Variances

Request

Variances of Development Standards to allow:

- 1. A dwelling unit within a 640 sq. ft. accessory structure;
- 2. The total square footage of all accessory structures on the lot to exceed 50% the square footage of the footprint of the residence.

Code Requirement

UDO Section 5.04 D – *Prohibited for Occupancy:* A permitted accessory structure shall not be utilized for human occupancy.

UDO Section 5.07 F 1: <u>Maximum Size</u>: The total square footage of all enclosed accessory structures on a lot adjoining one or more lots in the RE, R1, R2, VR, M1, M2, MP, VM, IS, C1, C2, I1, I2, or HI Districts shall not exceed fifty percent (50%) of the footprint of the primary structure.

Purpose of Requirements – Prohibiting occupancy of accessory structures maintains the zoning district's intended residential density among properties. Limiting the size of residential accessory structures ensures that the residence remains the visual focal point of the property and discourages use of residential accessory buildings for commercial activities utilizing large trucks, large machinery, and/or large equipment.

Property Map



Case Description

- The petitioner plans to construct a 16' x 40' (640 sq. ft.) accessory structure with dwelling unit including one bedroom and one bathroom.
- The petitioner intends to construct the accessory structure in the same location as an existing shed and to move the shed to the rear of the property.
- The petitioner's elderly mother intends to occupy the dwelling.
- The square footage of the new structure and existing shed would equal approximately 57% the square footage of the footprint of the house. The property tax card provides the square footage of the house for the square footage calculation.
- The existing driveway terminates behind the house and would provide access to the dwelling.
- The petitioner has obtained soil samples behind the existing residence. The Shelby County Health Department has
 provided recommendations for installation of a new septic system which would accommodate both the existing
 residence and the new dwelling (see Recommendation for Residential Sewage Disposal Systems on the following
 pages).
- Addition of the dwelling unit within the accessory structure would require Site Plan approval prior to issuance of
 construction permits to ensure that the structure complies with all County codes. The Site Plan Committee includes
 the Planning Director, Building Inspector, and Health Department Environmental Technician.
- At the time of Site Plan review, the Health Department would review the design of the septic system to ensure that the system complies with the requirements listed in the Recommendation for Residential Sewage Disposal Systems. If compliance with the requirements proves infeasible, the County will not issue a permit for installation of a dwelling unit within the accessory structure.

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: The accessory structure with dwelling unit would require Site Plan approval and construction permits, and the structure must comply with all building codes and sanitation requirements prior to final inspection. Use of the dwelling by one person would not add significant traffic to the public road.

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: Implementation of the primary structure setback requirement and location of any outdoor living area on the side of the structure not facing adjoining property would protect the privacy, use, and enjoyment of adjoining property.

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

Staff Analysis: A strict application of the ordinance would not allow an independent affordable housing option for a senior citizen on the same property as family members and would also not allow for a shed large enough to accommodate typical property maintenance equipment.

Staff Recommendation

APPROVAL primarily because a strict application of the ordinance would not allow an independent affordable housing option for a senior citizen on the same property as family members.

Staff recommends the following **stipulations** to protect the privacy of adjoining property and to ensure that the living quarters do not become a dwelling unit used independently from the main house:

- 1. The dwelling shall be setback at least 15-feet from the side property lines.
- 2. Any porch, deck, or patio associated with the dwelling unit shall not be located on the side of the dwelling closest to the side property line.
- 3. The dwelling unit shall not be rented and shall only be occupied by the mother of the petitioner.

Owner:

- The variance shall expire when the petitioner owner no longer owns the property.
- 5. Beginning in September of 2025, the petitioner shall provide notice to the Plan Commission office every other year regarding the continued need by the petitioner's mother to occupy the dwelling.

Applicant/Owner Information

Applicant

Bruce Metzger 11174 N 460 W New Palestine, IN 46163

Bruce Metzger & Corinne Cook-Oliver



Shelby County Health Department

1600 E. St. Rd. 44, Suite B, Shelbyville, In 46176 (317) 392-6470 Fax (317) 392-6472

Parcel ID:

73-02-04-300-100.000-013

Recommendations for Residential Sewage Disposal Systems

	Applicants Name	Bruce M	etzger & Coı	rinne Cook-Oliv	er	Existing Hor	me?
	Township:	Moral Se	ction: 4	Soil Sheet	Test Date	8/1/2022 F	ailing Septic?
	Property Location:	On East side	of 460 W So	outh of 1120 N			
				11174 N 460 W			
	Subdivision/Tract	Name:	Lakeview	Lot Numbe	er: 77	Soil Scientist:	
	Number of Bedroo	oms & Bedroom E	quivalant:	5		Heltsley,Jerry	
Gravity Fed	Soil Borings: 1	,2&3 Limiting	g Layer Depth: MC		ing Rate SS: 0.3 ing Rate AG 0.25	Slope: %	Alternating Fields
	150 Gal/Da	y * Number of	Bedrooms &	Bedroom Equiva		orption	
<u>House</u>	Lowest Loa	ding Rate 24"	Below the Pro	pposed Trench E	Bottom Squ	d Total lare Feet	<u>House</u>
ptic ank	a Den/Se Rooms e	n Equivalents ewing/Sun ect. with a clos	-	150 * 5 =	Total 2500 Squa Feet		Septic Tank
<u>D-B</u>	<u>0X</u>	Gravity Fed	Flood Dosing	Alternating Field	Pressure Dosing	Above Ground Mound	D-Box
	Septic Tank		1500		1500	1500	
	Dosing Tank		1500		1500	1500	
	Total Sq. Ft.		2500	x 2	2500	3000	'
Flood	Min. Trench	Al	I Trenches N	lust Be 10" Into	The Original S	<u>Soil</u>	Pressure/
Dosing	Depth	"	10 "	"	10"		Mound
House		Trenches	Can Not Be	Deeper Than 3	6" Below The F	inal Grade	House
<u></u>	Max. Trench Depth	••	10 "	"	10 "		
tic nk		A Minimu	m Of 12" Of	Topsoil (Fill) M	lust Cover The	Aggregate	Septic Tank
ing	Min. Fill Depth	"	14"	"	14"		Dosing
nk D-Bo	Surface Drain F	Required?:		Subsurfa	ce Drain Required	?: Yes	<u>Tank</u>
	NOTE: A perm office and approprings. The p	roved. Also, tl property owne	nis septic sy r is responsi	stem review ap ble for soil bor	plies ONLY to ing flags not be	the site of soil eing covered o	<u>r</u>
_	removed from	tne site before	any onsite	evaluation is co	ompleted by thi	s office.	<u>Manifold</u>
	dditional Comments: county GIS shows	home as 4 bed	droom. To c	hange to 3 bed	room owner ne	eds to change)
	at Assesors office	and turn in pa	aperwork fro	m Assesor to o	our office.		
4	Bedroom (3 home	e + 1 Mother) -	1250 gallon	septic tank & 1	250 gallon dos	ing tank with	
	2000 sq. ft. septic	field (may be	able to dowr	size to 1500 us	sing approved p	oiping with 25°	%
	reduction). May w	ant to look at	ATL or Pres	by due to limite	ed space.		
	T 1	A la a sus 41 a s = 11	. a _ a _ a				

The Absorption Field size can be downsized by several methods:

- A) Reduction formula from ISDH Rule 410 IAC 6-8.3 Residential Sewage Disposal Systems
- B) Using a secondary treatment device (such as a sand filter) prior to the absorption field.
- C) Using the 25% reduction with ISDH approved piping.

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.

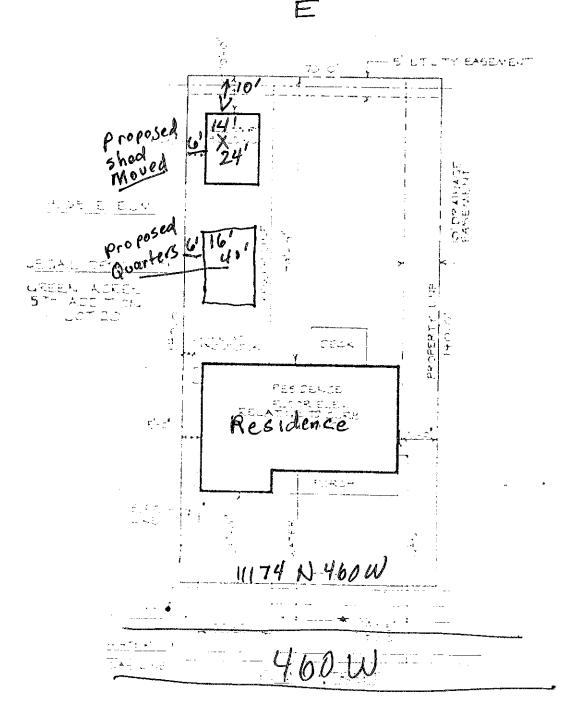
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aximum Number of Customers per Day/Week/Month:
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escription of any Outdoor Storage:
escription, Size, and Placement of any Signage:
escription of Waste Disposal: Newly constructed Septic
tisting and/or Proposed Building and Site Improvements Pertaining to Proposed Use (ex. parking lot and caping, commercial upgrades to building, etc.):

DEVELOPMENT STANDARDS VARIANCEFINDINGS OF FACT

Applicant: Bruce Metzger
Case #:
Location: 11174 N 460 W New Palestine, 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 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. Adding a one bedroom living space for a single retired elderly woman, with its own septic. This should only enritch our (ounty. It's also temporary so another individual wouldn't change the dynamic.
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 already a somilar (in fash on and size) Structure in the spot we're obsting to place the living quarters.
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. There is no difference in use of the land. Everyone in this neighbor hood has a septic system. Our frigerty will still have less autos and inhabitants then many of our neighbors.

SITE PLAN EXAMPLE

At minimum, the site plan should include all existing & proposed buildings on the subject property and all existing & proposed features of the property related to the request. The plan does not necessarily need to be drawn to scale, however the plan should indicate the dimensions of the property, dimensions of all buildings & property features, and the distance for all buildings and property features from the property line. The applicant may hand-draw the site plan or print out an online aerial map, however the Planning Director has the discretion to require a site plan drawn by a professional engineer dependent upon the complexity of the request. If approved, the request would be limited to the information provided on the site plan and any change that increased the scope of the proposal would require new approval from the Board



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Zoning Violation

Case Number: V21-22

Property Owner: John H & Cynthia S DeMartino

Location: 2027 W Washington Ave, Shelbyville, Addison Township

Suspected Violations

1. Operation of an automobile-oriented business on property in the RE (Residential Estate) District.

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

2. Outdoor storage of inoperable vehicles on residential property not within an enclosed privacy fence.

Section 5.54 C - Inoperable Vehicles: Inoperable vehicle shall be stored indoors or outdoors in an enclosed area in the rear yard. When stored outdoors the rear yard or the area in which the vehicle is stored shall be enclosed with a minimum six (6) foot tall privacy fence.

Evidence of Violation

Photographs and video taken from the property to the west over a year timeframe showing:

- Several different vehicles in various states of disrepair delivered and stored on the property
- Commercial box trucks
- Various individuals working on the property that appear to be employees
- Outdoor storage of inoperable vehicles behind the barn not within a fully enclosed fenced area

Case History

August 2021 – Staff received a complaint regarding operation of a junk yard/chop shop/buy here pay here operation and photographs taken from the property to the west. The photographs showed outdoor storage of inoperable vehicles and a flatbed truck with a logo of an auto repair bussiness owned by a family member of the property owner. Staff sent the property owner a violation letter (see attached letter).

Desiree,

This is the neighbor to the east that is running a junk yard/chop shop/buy here pay here out of his house. This is a view across my fence and every day is typical junk coming in on the flat bed truck. He has guys showing up and working in his barn on autos. He has more places according to my nephew who is a deputy sheriff that he might use as his main address of business. I can get more pics if you like but I think these sum it up pretty quick.

Thanks

Rick Beckner









September 2021 – Staff met with the property owners on site. The property owners explained that they conducted repair of personal vehicles. Staff explained that the Ordinance regulates outdoor storage of inoperable personal vehicles and provided a plan and conditions for the property owners to bring the property into compliance. The property owners agreed to the plan and conditions via email.

On Wed, Sep 15, 2021 at 11:02 AM Desiree Calderella < dcalderella@co.shelby.in.us > wrote:

Thank you for meeting with me yesterday. In summary, we discussed the following:

The property must come into compliance with all conditions listed below by October 14, 2021.

Only registered vehicles with current plates may be stored outdoors on the property, unless within an enclosed privacy fence as indicated below. You anticipate a total of four vehicles stored outdoors.

Unregistered and non-plated vehicles may be stored indoors or stored in the rear yard within an area completely enclosed by a wooden privacy fence. The privacy fence must at least 6-feet tall and no more than 8-feet tall.

Any vehicles stored outdoors in an area other than the existing parking area near the house must be stored on a hard surface.

You may service personal vehicles indoors.

You may not service vehicles that you do not own on the property.

You intend to use the building materials stored outdoors to insulate the barn during this calendar year.

Please let me know that you agree with these conditions and the plan to bring the property into compliance.

To: Desiree Calderella <dcalderella@co.shelby.in.us>

Subject: Re: Zoning Violation Follow Up

Desiree Calderella, AICP

It was nice meeting with you yesterday. We sure appreciate you working with us. We are in agreement with the conditions stated in this email. Thank you again!

Cindy DeMartino

October 2021 – Staff inspected the property and verified that the property complied with the provisions of the UDO.

Cindy,

April 2022 – Staff received a complaint that bussiness operations had resumed and photographic evidence of bussiness operations (see attached photographs). Staff contacted the property owner and requested that the owner bring the property into compliance by May 14th and the owner agreed to bring the property into compliance. Staff also informed the property owner that if the issue persisted past that date, Staff would forward the case to the BZA to determine further enforcement action.

I am contacting you regarding my neighbor Jack DeMartino. He is going full strength again on his business. He has people working over there seven days a week. As of Monday,

there was 27 vehicles there. I would like to set up a meeting with you. I have photos and videos of employees going in and out, commercial Snap On truck deliveries and his flatbed hauling his junk cars in. The file is too large to email. I think once you go through all the material you will know it is a full-fledged business. I have worked too hard to get close to retiring and have this illegal business move in next door.
I appreciate your time.
Thank you
Rick Beckner
On Thu, Apr 14, 2023, 8-31 AM Desiree Calderella edicaderella edicader
Your neighbor submitted over 300 photographs from the past four months depicting multiple people on the property working on multiple different vehicles. This type of activity qualifies as a business and is not purmitted in a residencial coming district. You will either need to cesse operations or apply for a variance to request that the Board of Zoning Appeals permit operation of the business on the property. Given your present circumstances, I am willing to grant some additional time for you to apply of the variance or bring the property into compliance. Let me know if a deadline of May 14" works on your each. If the issue persists past that date, I will need to forward the case to the Board of Zoning Appeals to determine further enforcement action.
Thank you,
Desirce Calderella, AID
To: Desiree Calderella <dcalderella@co.shelby.in.us></dcalderella@co.shelby.in.us>
Subject: Re: Violation Resolved
HelloThank you for your kind response. I appreciate the time frame you've given us for compliance. We will have the property in compliance by May 14th. Thank you again.
Cindy
To: Desiree Calderella <dcalderella@co.shelby.in.us></dcalderella@co.shelby.in.us>
Subject: Re: Violation Resolved
We have begun building the fencejust wanted to send you pics and double check that this is acceptable and we won't have issues once it is installed. Thank you so much for all your assistance.
Cindy

August 2022 – Staff received a complaint regarding the continuation of bussiness operations and photographic evidence of bussiness operations. Staff informed the property owner that she had forwarded their case to the BZA to determine further enforcement action.

Desiree,

I would like to notify you that my neighbor John DeMartino is running his business as usual out of his home/barn. There are employees there daily, one in particular works 7 days a week most of the time. I have talked to other neighbors who agree they are running a business illegally and it is a nuisance. We also worry about the safety of our 9 grandchildren who are here often playing outside. Something needs to be done, there is a reason for rules and regulations and he is definitely not following any of them.

Thank you, Rick Beckner





On Mon, Aug 23, 2023 at 2:35 PM Desiree Calderella Considerella Consid

BZA Decision

Staff requests that the BZA review the evidence and determine if the property violates the provisions of the Unified Development Ordinance. If the Board determines a violation exists, Staff requests that the Board provide direction to Staff regarding enforcement action.

Shelby County Plan Commission

25 West Polk Street, Room 201 Shelbyville, Indiana 46176 (317) 392-6338

Planning Director Desiree Calderella, AICP

NOTICE OF ZONING VIOLATION

via certified mail # 7016 0340 0001 1148 7757

V21-08

August 24. 2021

John H & Cynthia S DeMartino 2027 W Washington Ave. Shelbyville, IN 46176

The Shelby County Plan Commission has obtained evidence of violations of the Shelby County Unified Development Ordinance on property you own at 2027 W Washington Ave, Shelbyville. With this letter, the Shelby County Plan Commission, which is charged with enforcing the ordinance, requests that you correct the violations. The specific terms of the violations are detailed here:

1. Location of violation: 2027 W Washington Ave, Shelbyville

2. Specific description of violations:

- a. Evidence of operation of an automobile-oriented business on property in the RE (Residential Estate) District including several vehicles in disrepair and a flat-bed truck with business decal.
- b. Outdoor storage of vehicles in disrepair.
- c. Parking of vehicles on the lawn.

3. Specific portions of zoning ordinance violated:

- a. Section 2.11 RE District Intent, Permitted Uses, and Special Exception Uses
- a. Section 5.54 (A) Prohibited: The outdoor storage of equipment, machinery, building materials, waste or scrap materials, pallets, inoperable vehicles, and similar materials shall be prohibited.
- b. Section 5.60 (A) All ingress/egress onto a driveway or parking area and required parking lots shall utilize a paved surface of concrete, asphalt, brick pavers, or the like. Gravel, stone, rock, dirt, sand, or grass shall not be permitted as parking surfaces, except the A4 zoning district which may use gravel. Parking of vehicles shall not be permitted on lawns or other pervious-surfaced areas of a lot.

4. Options for corrective action:

- c. Discontinue all business operations and remove all items associated with the business from the property. Park any personal vehicles on a hard surface.
- a. File for a Variance. Obtain approval of this variance from the Shelby County Board of Zoning Appeals.
- b. Appeal the issuance of this violation to a public hearing of the Shelby County Board of Zoning Appeals.

Corrective action listed above shall be taken by **September 7, 2021.** Failure to take corrective action by September 7, 2021 will result in a **fine of \$100**. If corrective action is not taken by September 7, 2021, the Plan Commission will issue ongoing additional **fines each day up to \$7,500**, which if unpaid will attach as a lien to

Shelby County Plan Commission

25 West Polk Street, Room 201 Shelbyville, Indiana 46176 (317) 392-6338

Planning Director Desiree Calderella, AICP

your property. The Plan Commission may employ any other legal remedy permitted by the Unified Development Ordinance.

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

Sincerely,

Desiree Calderella, AICP

Planning Director

Shelby County Plan Commission

December & January



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P PTZ Camera_main_202203





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P PTZ Camera_main_202203 P PTZ Camera_main_202203

March





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P PTZ Camera_main_202203 P PTZ Camera_main_202203



April & June



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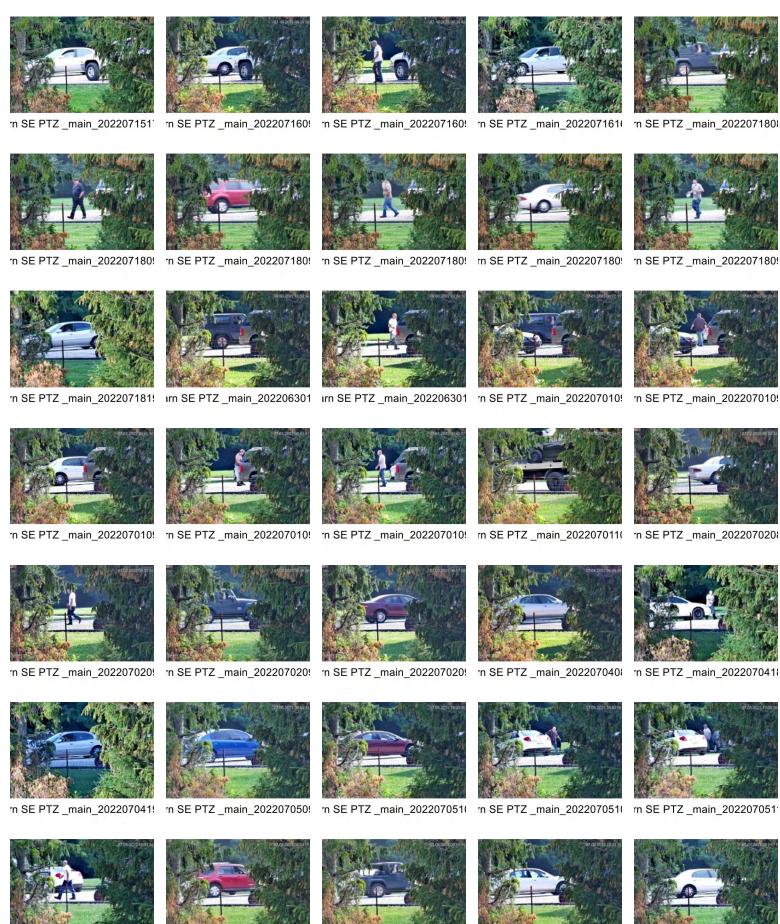
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April & June









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rn SE PTZ _main_2022070609 BZA September 13, 2022 Page 29 of 31

rn SE PTZ _main_2022070610 rn SE PTZ _main_202207070

July



Aug & Sep

IMG_1092

IMG_1097





rn SE PTZ _main_2022081910 rn SE PTZ _main_2022081910 rn SE PTZ _main_2022081910

IMG_1096