

**Shelby County Board of Zoning Appeals  
Meeting Minutes  
March 14, 2023**

**Members Present:**

Kevin Carson  
Terry Knudson  
Dave Klene  
Jim Douglas  
Nick Hartman

**Members Absent:**

None

**Staff Present:**

Desiree Calderella – Planning Director  
Jason Clark – Board Attorney

**Call to Order and Roll Call:**

Jim Douglas called the meeting to order at 7:00 pm in Room 208 A at the Court House Annex, Shelbyville.

**Approval of Minutes:**

The minutes were CONTINUED.

**Old Business:**

None.

**New Business:**

**BZA 23-09 – KAYLA LLOYD: DEVELOPMENT STANDARDS VARIANCE – To allow for a Type 1 Home Business (dog grooming) conducted within an accessory structure [UDO Sec. 5.33 D 1 a]. Located at 10156 N 400 W, Fountaintown, Moral Township.**

Desiree Calderella read the petition into the record and stated that Staff recommends approval.

Kayla Lloyd indicated that the business would follow all other guidelines and that she

would not have any employees.

The Board opened the hearing for public comment. There was none. The Board closed the public comment portion of the hearing.

Q: Terry Knudson – What kind of dogs do you plan to groom?

A: Kayla Lloyd – Any under 100 lbs. No breed restrictions.

Q: Nick Hartman – How long have you been doing this?

A: Kayla Lloyd – Ten years.

Q: Dave Klene – How many would you have in a days' time or a weeks' time?

A: Kayla Lloyd – Maximum six customers a day.

Q: Terry Knudson – Where have you been doing it prior to now?

A: Kayla Lloyd – PetSmart in Marion County, PetSmart in Hancock County, Sugar Creek Caine Ranch.

Q: Kevin Carson – What would be your general time of operation?

A: Kayla Lloyd – 8AM to 4PM Monday through Friday.

Q: Kevin Carson – Will the customers stay or leave while you groom?

A: Kayla Lloyd – I would prefer them to leave and come pick back up.

Q: Nick Hartman – Everything will stay inside the building?

A: Kayla Lloyd – Yes.

Q: Kevin Carson – This will not require paved driveway or handicap accessible?

A: Desiree Calderella – Correct since this is a home business.

Dave Klene made a motion to vote on the petition and Terry Knudson seconded the motion. The petition was **APPROVED 5-0**.

The Board adopted the following Findings of Fact:

1. The approval will not be injurious to the public health, safety, and general welfare of the community.
2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner.
3. The strict application of the terms of the Shelby County Unified Development Ordinance will result in a practical difficulty in the use of the property.

**BZA 23-10 – F & A MARTIN HOLDINGS LLC: DEVELOPMENT STANDARDS VARIANCES – To allow for use of a lot in the C2 (Highway Commercial) District with a lot area of 7,040 sq. ft. (minimum 20,000 sq. ft. required), with a lot width of 55-feet (minimum 100-feet required), and with road frontage of 55-feet (minimum**

**80-feet required) [UDO Sec. 2.32], use of an existing driveway within 100-feet of other driveways [UDO Sec. 5.20 A 2 a] and adjoining a property line (minimum 3-foot setback required) [UDO Sec. 5.20 D], use of existing gravel parking and maneuvering areas (hard surface required) [UDO Sec. 5.60 A] and adjoining the right-of-way of Carey St. (minimum 40-foot setback required) [UDO Sec. 2.32], and without identified ADA parking spaces [UDO Sec. 5.60 F]. Located at 506 W Carey St, Fairland, Brandywine Township.**

Desiree Calderella read the petition into the record and stated that Staff recommends approval with stipulations.

Autum Martin provided an overview of the petition.

The Board opened the hearing for public comment. There was none. The Board closed the public comment portion of the hearing.

Q: Kevin Carson – You keep the gate locked to the east?

A: Autum Martin – Yes.

Q: Nick Hartman – I assume you don't have any issues with the stipulations?

A: Autum Martin – We do not.

Kevin Carson made a motion to vote on the petition with stipulations and Terry Knudson seconded the motion. The petition was **APPROVED 5-0** with **stipulations**:

- 1. Variance approval shall only apply to use of the property for a carry-out pizza shop. Change in use of the property shall render the variance void.**
- 2. The only access to the property shall be from the adjoining alley to the west.**
- 3. Parking spaces shall only be located perpendicular to and adjoining the east property line and at least two parking spaces shall be defined with parking bumpers.**
- 4. At least one paved parking space in compliance with Section 5.60 F Parking for the Disabled shall be provided.**

The Board adopted the following Findings of Fact:

1. The approval will not be injurious to the public health, safety, and general welfare of the community.
2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner.
3. The strict application of the terms of the Shelby County Unified Development Ordinance will result in a practical difficulty in the use of the property.

**BZA 23-05 – CHAD BEAVER: DEVELOPMENT STANDARDS VARIANCES –  
To allow for an 1,800 sq. ft accessory structure in the front yard [UDO Sec. 5.04 C]  
and exceeding 50% the square footage of the footprint of the residence [UDO Sec.  
5.07 F 1]. Located at 5021 N Frontage Rd, Fairland, Brandywine Township.**

Desiree Calderella read the petition into the record and stated that Staff recommends approval with stipulations.

Chad Beaver stated that he planned to build a 30'x 60' pole barn for storage.

The Board opened the hearing for public comment.

Steve Cummings, whose wife owns farmland across the road from the property on N 500 W, expressed concern with the distance of the barn from the road, the size of the barn, the appearance of the barn in relation to the brick house on the adjacent property, and the potential for future use of the barn for business purposes.

The Board closed the public comment portion of the hearing.

Q: Dave Klene – Are you intending to run a business out of this?

A: Chad Beaver – I do shaved ice, snow cones. We run that somewhat out of my house. I'm building this barn just to store my equipment. I've got three buses and two trailers.

Q: Dave Klene – Are you intending to have access to the road (CR 500 W)?

A: Chad Beaver – Yes. Seventy feet roughly from the edge of the barn to the street.

Q: Dave Klene – Are you comfortable with the stipulation that the barn not sit closer to the road than the residences?

A: Chad Beaver – Yes. Seventy feet roughly from the edge of the barn to the street.

Chad Beaver explained that he could not rotate the barn to construct the barn further from the road due to the location of the septic system.

Q: Dave Klene – Is the driveway part of this package?

A: Desiree Calderella – No, but it would meet all the requirements.

Q: Nick Hartman – How tall are you building this building?

A: Chad Beaver – Fourteen feet.

Chad Beaver explained that he planned to add a driveway to both sides of the building to allow him to pull trucks through the building.

Q: Dave Klene – Is fourteen feet the same height as the two houses next to it?

A: Chad Beaver – Pretty close.

Q: Dave Klene – What type of siding are you looking at?

A: Chad Beaver – Grey metal.

The Board discussed how the proposed barn would fit on the lot if placed behind the front of the adjacent houses and if the barn would exceed the height of the houses on the adjacent lots.

Desiree Calderella stated that storing bussiness equipment in the structure would not be permitted by County ordinance.

Dave Klene noted that none of the residential neighbors filed an objection.

Dave Klene made a motion to vote on the petition with stipulations and Nick Hartman seconded the motion. The petition was **APPROVED 3-1**, with Jim Douglas casting the dissenting vote and Kevin Carson abstaining, with **stipulations**:

- 1. The structure shall not sit closer to CR 500 N than the house on the adjoining property to the east.**
- 2. The structure shall not exceed the height of the house on the adjoining property to the east.**

The Board adopted the following Findings of Fact:

1. The approval will not be injurious to the public health, safety, and general welfare of the community.
2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner.
3. The strict application of the terms of the Shelby County Unified Development Ordinance will result in a practical difficulty in the use of the property.

**BZA 23-11 – ROBERTO CHAVEZ: USE VARIANCE – To allow for a commerical equestrian training and exercise facility in the A1 (Conservation Agricultural) District. Located north of and adjoining 4500 N Michigan Rd, Shelbyville, Brandywine Township.**

Desiree Calderella read the petition into the record and stated that Staff recommends approval with stipulations.

Jake Brattain with McNeely Law represented the petitioner and provided an overview of the petition. He explained that the petitioner currently stables horses at the nearby casino. He indicated that traffic would mostly consist of staff and veterinarians, with pick-up and drop-off of horses during the horse racing season.

Roberto Chavez was present.

The Board opened the hearing for public comment. There was none. The Board closed the public comment portion of the hearing.

Q: Jim Douglas – I thought this whole property flooded?

A: Jake Brattain – We have about 6.5, 7-acres that is able to get out of the flood. It is in the flood fringe.

Q: Kevin Carson – Do you plan to put fill in there to bring the level up? That is going to be a problem.

A: Jake Brattain – Yes. We are out of DNR jurisdiction in the flood fringe.

Jake Brattain indicated that he had spoken to several neighbors in the area to introduce the project and make sure they received notice of the meeting.

Q: Kevin Carson – Does this fall under the jurisdiction of raising our flood insurance if we allow a structure to be built?

A: Desiree Calderella – The intent is to fill and get it removed from the floodplain.

Q: Jim Douglas – Do you have the dimensions of the stable?

A: Jake Brattain – About 280' x 140'.

Q: Terry Knudson – Isn't there a better place to build a horse barn than in a floodplain?

A: Jake Brattain – It's a 45-second drive to the horse track.

Dave Klene noted that if approved, the petitioner would need to comply with the rules of DNR.

Desiree Calderella explained that the County would not issue permits until the petitioner obtained a LOMA from FEMA removing the ground from the floodplain.

Q: Jim Douglas – How many acres are you going to fill?

A: Jake Brattain – Between two and three.

Q: Jim Douglas – What's the plans for the rest of the property?

A: Jake Brattain – Maybe fence some of it, pasture area, farm ground.

Q: Nick Hartman – The only access to this property is from Michigan Rd?

A: Jake Brattain – Yes there is an existing drive that will have to be concrete or asphalt.

Desiree Calderella noted that if the petitioner used the stable privately, they would not need Board approval of a use variance and could proceed with addressing the floodplain issues.

Dave Klene made a motion to vote on the petition with stipulations and Nick Hartman seconded the motion. The petition was **DENIED 4-1**, with Dave Klene casting the dissenting vote. The Findings of Fact were continued to the next meeting.

**BZA 23-07 – MICHAEL JAMES: SPECIAL EXCEPTION & DEVELOPMENT STANDARDS VARIANCES – To allow for temporary use of property for a Type 3 Home Business (landscape contractor) in the RE (Residential Estate) District, parking of more than fourteen (14) operable trucks and trailers on the property [UDO Sec. 5.35 E 3 c], unscreened outdoor storage of commercial vehicles stored outside between 9:00 PM and 5:00 AM [UDO Sec. 5.35 E 4 a], and unscreened outdoor storage of commercial products, materials, supplies, waste, scrap, and the like [UDO Sec. 5.35 E 4 b]. Located at 4136 S Marietta Rd, Shelbyville, Hendricks Township.**

**BZA 23-08 – MICHAEL JAMES: USE VARIANCE – To allow for development of a landscape contractor’s office and yard in the RE (Residential Estate) District. Located at 5073 W SR 44, Shelbyville, Hendricks Township.**

*BZA 23-07 & BZA 23-08 were heard together.*

Desiree Calderella read the petitions into the record and stated that Staff recommends approval with stipulations.

Kurt Johnson, attorney with Deprez, Johnson, Brant and Eads, represented the petitioner. He provided a summary of business operations and the variance requests. He indicated that they had no objections to the stipulations.

Mike James was present.

The Board opened the hearing for public comment.

John Rinehart, who owns property at 5295 W SR 44, expressed concerns with case BZA 23-08. He expressed concern that the size of the property will not accommodate a 21,000 sq. ft. building in compliance with the requirements for water and sewage, with traffic safety, and with placement of a commercial business within a residential neighborhood.

Zanda Stead, who lives in Hendricks Township, expressed concern with crime in the area and asked about site security at the SR 44 location.

The Board closed the public comment portion of the hearing.

Kurt Johnson explained that the SR 44 property had previously included a commercial business and that the petitioner proposes a small business generating little traffic.

Mike James explained that the proposed building at the SR 44 location would primarily serve as a maintenance shed and that most equipment would remain on the road during the summer. He stated that the site would have surveillance and an alarm system. He indicated that landscape crews would work off-site.

Q: Kevin Carson – I assume you are going to demolish the building that is there?

A: Mike James – We will have to do a lot of cleanup of the property.

Mike James indicated that he planned to remove the septic system currently on the property and that the property includes a water line.

Q: Kevin Carson – Will there be an office?

A: Mike James – There will be a small office.

Q: Kevin Carson – Restrooms, you will need to apply for another septic system?

A: Mike James – Yes.

Desiree Calderella explained that the petitioner had applied for a use variance rather than a rezoning due to lack of other commercial zoning in the area. Also, that a use variance specifically applies to the use requested and terminates when the property changes ownership.

Q: Nick Hartman – In the wintertime, will you have enough room to put everything inside?

A: Mike James – Yes, I want everything to be inside.

Q: Nick Hartman – You don't plan to grow. What will you do with this when you retire?

A: Mike James – We are working on a succession plan with one of my employees.

Q: Nick Hartman – You show a fence along SR 44, do you have a height? Solid or chain link? What is your idea on landscaping?

Desiree Calderella outlined the fencing and landscaping requirements referenced in the recommended stipulations.

Jim Douglas expressed concern that approval would set a precedent for continued future use of the site for commercial activities.

Q: Nick Hartman – You're using all three buildings to store stuff now?

A: Mike James – Yes.

Dave Klene made a motion to vote on both petitions with stipulations and Terry Knudson seconded the motion.

**BZA 23-07 was APPROVED 5-0 with stipulations:**

- 1. Operation of the business shall comply with Section 5.35 HB-03: Type 3 Home Business Standards of the Unified Development Ordinance, other than Section 5.35 E 4 b.**



- 2. Equipment, products, materials, supplies, waste, scrap, and the like shall be stored indoors or within 20-feet directly behind the accessory structures. Between the hours of 9:00 PM and 5:00AM, commercial vehicles shall also be stored indoors or within 20-feet directly behind the accessory structures.**

The Board adopted the following Findings of Fact:

1. The proposed special exception is consistent with the purpose of the zoning district and the Shelby County Comprehensive Plan.
  2. The proposed special exception will not be injurious to the public health, safety, morals and general welfare of the community.
  3. The proposed special exception is in harmony with all adjacent land uses.
  4. The proposed special exception will not alter the character of the district.
  5. The proposed special exception will not substantially impact property value in an adverse manner.
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1. The approval will not be injurious to the public health, safety, and general welfare of the community.
  2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner.
  3. The strict application of the terms of the Shelby County Unified Development Ordinance will result in a practical difficulty in the use of the property.

**BZA 23-08 was APPROVED 4-1, with Jim Douglas casting the dissenting vote, with stipulations:**

- 1. The size and location of the building and parking areas shall be consistent with the Site Plan submitted with the variance application.**
- 2. Outdoor storage of vehicles, equipment, product, supplies, materials, waste or scrap, pallets, and the like shall not be permitted.**
- 3. All landscaping requirements for properties in the I1 (Light Intensity Industrial) District identified in the UDO shall apply to the development. Specifically:**
  - a. One (1) canopy tree and one (1) ornamental or evergreen tree per sixty (60) lineal feet of frontage shall be planted along SR 44.**
  - b. Landscape Buffer Yard 'B' shall be installed along all property lines: One (1) canopy tree and two (2) ornamental or evergreen trees shall be planted for every sixty (60) feet of contiguous boundary with the adjacent lot. Each tree shall be planted within fifteen (15) feet of the property line, but no closer than five (5) feet to the property line.**
  - c. At least ten (10) deciduous trees shall be planted or preserved on the lot.**

4. **All outdoor site lighting shall include full cut-off fixtures and the maximum allowable light at a property line shall be five (5) lux.**

The Board adopted the following Findings of Fact:

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 not be affected in a substantially adverse manner.
3. The need for the variance arises from some condition peculiar to the property involved.
4. 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.
5. The approval does not interfere substantially with the Comprehensive Plan.

### **Discussion**

#### **Zoning Violations**

##### **Virk – 7165 Old SR 252**

Desiree Calderella indicated that she had visited the property and that the owner had removed the trucks. She indicated that the property owner's attorney had informed her that his client planned to pursue an alternative property in Morristown.

##### **Rigdon – 5879 N PR 660 W**

Desiree Calderella indicated that the property owner has continued to work to bring the house into compliance.

##### **Wood - 4942 N Brandywine Rd**

Desiree Calderella stated that she planned to send the property owner a violation letter.

### **Adjournment:**

With no further business to come before the Board, Kevin Carson moved to adjourn, and Nick Hartman seconded the motion. The meeting was adjourned.

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President  
Jim Douglas

Date

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Secretary  
Kevin Carson

Date