

Shelby County Board of Zoning Appeals
Meeting Minutes
April 12, 2022

Members Present:

Kevin Carson
Terry Knudson
Dave Klene
Jordan Caldwell
Jim Douglas

Members Absent:

None

Staff Present:

Desiree Calderella – Planning Director
Jody Butts – Board Attorney

Call to Order and Roll Call:

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

Approval of Minutes:

Dave Klene made a motion to approve the minutes from March 8, 2022 & December 12, 2021. Kevin Carson seconded the motion. The minutes were approved 5-0.

Old Business:

BZA 22-06 – RICHARD N SMITH: DEVELOPMENT STANDARDS VARIANCES – To allow for a 1,600 sq. ft. accessory structure in a Special Flood Hazard Area below the Flood Protection Grade (FPG) [UDO Sec. 5.20 E 2 b], in a Special Flood Hazard Area on a lot over one-half acre [UDO Sec. 5.20 F 4 d], and in the front yard [UDO Sec. 5.04 C]. Located at 4310 S Sugar Creek Rd, Franklin, Hendricks Township.

Desiree Calderella read the petition into the record and stated that Staff recommends denial. She also recommended stipulations of approval if the Board chose to approve the request.

Richard Smith indicated that he plans to build a pole barn with a concrete floor. He stated that the barn would sit in a flood area, but not a floodway. He stated that the existing building pad that he will use for the barn sits about one foot above grade. He stated that he has lived on the property for 16 to 18 years and has never seen water where

he plans to construct the barn. He indicated that he plans to use the barn as a shop and for the storage of tools, and that the barn will not include living quarters. He explained that the adjacent property includes a field tile that diverts water away from the property.

The Board opened the hearing for public comment.

Jeff Tennell, who owns all adjacent property, indicated that he has not seen water on the subject property. He explained that the septic system prevents construction of the barn outside of the flood area and that if constructed out of the flood area the barn would block visibility around the corner of the road.

Blake Newkirk, who lives in Bengal, asked the petitioner to identify the location of the septic system.

The Board closed the public comment portion of the hearing.

Q: Kevin Carson – Would you consider adding fill dirt to elevate the structure?

A: Richard N Smith – No, adding fill dirt would cost money and have not seen water on the proposed building site.

Q: Kevin Carson – Could the petitioner attach the new structure to the existing structure in the flood hazard area to eliminate the structure elevation requirement?

A: Desiree Calderella – Only if the addition did not exceed 50% of the value of the existing structure.

Q: Kevin Carson – How high will the floor be above ground level?

A: Richard N Smith – Best guess would be about a foot above, maybe more.

Jim Douglas spoke about an increase in flooding in general.

Q: Terry Knudson – Do you agree to Staff's stipulations?

A: Richard N Smith – Yes.

Desiree Calderella explained that granting variances from floodplain requirements increases the risk of FEMA revoking federally backed flood insurance for all property owners in the County.

The Board discussed the history of the Board granting floodplain variances.

Q: Jordan Caldwell – Where do County records show the septic system on the property?

A: Desiree Calderella – No further north than the existing barn.

Kevin Carson made a motion to vote on the petition with Staff's stipulations and Dave Klene seconded the motion. The petition was **DENIED 3-2**, with Kevin Carson and Jim Douglas voting to approve the petition.

The Board continued the Findings of Fact to the May 10, 2022 meeting.

New Business:

BZA 22-18 – KENNETH & BRITTANI WILLOUGHBY: USE VARIANCE – To allow for temporary occupancy of a recreational vehicle prior to construction of a new single-family dwelling [UDO Sec. 2.12]. Located at 4155 W PR 733 S, Shelbyville, Jackson Township.

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

Kenneth Willoughby provided a summary of the variance request.

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

Q: Dave Klene – Do you agree with Staff’s recommended stipulation?

A: Kenneth Willoughby – Yes.

Q: Kevin Carson – Where on the property do you plan to place the RV?

A: Kenneth Willoughby – Behind the tree line.

Kevin Carson made a motion to vote on the petition with a stipulation and Dave Klene seconded the motion. The petition was **APPROVED 5-0** with a **stipulation**:

- 1. A single-family residence shall be constructed on the property and receive a certificate of occupancy by April 12, 2023 (one year from the date of approval).**

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.

BZA 22-20 – KERRY ESTES: USE & DEVELOPMENT STANDARDS VARIANCE – To allow for placement of a manufactured home [UDO Sec. 2.03] and a dwelling less than 1,200 sq. ft. [UDO Sec. 2.04]. Located at 10176 N 600 W, Fountaintown, Moral Township.

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

Kerry Estes indicated that his son plans to live in the home and work at the dairy farm located on the property. He indicated that he plans to remove the non-historic portion of the existing home on the property.

The Board opened the hearing for public comment.

Dick Logan, who owns property at 5825 W 1050 N, stated that the petitioner has been a good neighbor and expressed support for the petition.

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

The Board adopted the following findings of fact:

Use Variance

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.

Development Standards Variance

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 22-16 – ROBERT KEITH & SHERRY LYNN BRANSON: USE & DEVELOPMENT STANDARDS VARIANCE – To allow for recreational use as the primary use of property [UDO Sec. 2.11] and an accessory structure eleven (11) feet from the front property line (minimum 50-foot setback required) [UDO Sec. 2.12]. Located at 3535 N Morristown Rd, Shelbyville, Marion Township.

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

Robert Keith Branson explained that he plans to use the structure for lockable storage and for a place to change clothing. He stated he may also place a freezer inside the structure. He stated that he had obtained approval from DNR to construct the structure in the floodplain.

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

Robert Keith Branson stated that he would not park the RV on the property during the winter.

The Board had a discussion regarding permitting and requirements applicable to development in the floodplain.

Q: Dave Klene – Do you agree with Staff’s recommended stipulations?

A: Robert Keith Branson – Yes.

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

- 1. The recreational vehicle shall be on site for less than 180 consecutive days at a time.**
- 2. The recreational vehicle shall be fully licensed and ready for highway use (defined as being on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions).**
- 3. Noncompliance with any conditions of IDNR Permit approval or County Floodplain Permit approval shall void the variance approval**

The Board adopted the following findings of fact:

Use Variance

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.

Development Standards Variance

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 22-19 – SHELBY COUNTY BOARD OF COMMISSIONERS:
DEVELOPMENT STANDARDS VARIANCES – To allow for a 50-foot-tall accessory structure (maximum 25-foot height permitted) [UDO Sec. 2.28] and two accessory structures 10-feet from the rear property line (minimum 20-foot setback required) [UDO Sec. 2.28]. Located at 1304 N Michigan Rd, Shelbyville, Addison Township.**

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

Chris King represented the petitioner. He explained that the transfer station required a height of 50-feet to allow for the raising of truck beds when unloading materials. He explained that the required truck turning radius restricts the placement of the sheds. He explained that all three structures would buffer the view of on-site activities from the adjacent properties to the east.

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

Q: Dave Klene – Do you agree with Staff’s recommended stipulation?

A: Chris King– Yes.

Q: Jim Douglas – What is the total project investment?

A: Chris King – Ten to twelve million.

Jordan Caldwell made a motion to vote on the petition with a stipulation and Jim Douglas seconded the motion. The petition was **APPROVED 5-0** with a **stipulation**:

- 1. Landscape Buffer ‘C’ as identified in the Unified Development Ordinance shall be installed between the transfer station and property line.**

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 22-12 – MIKE PEOPLES: DEVELOPMENT STANDARDS VARIANCE – To allow for a 1,320 sq. ft. accessory structure exceeding 50% the square footage of the footprint of the residence [UDO Sec. 5.07 F 1]. Located at 2675 E Beechwood Trail, Morristown, Hanover Township.

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

Mike Peoples indicated that he plans to build a stick-built garage. He explained that the building site proposed by Staff would result in the building siting at the lowest point on the lot and that the building would interfere with the septic system. He stated that the HOA would not allow him to conjoin the lots or construct a driveway across the lots. He indicated that the proposed building and driveway layout would resemble other development in the neighborhood.

The Board opened the hearing for public comment.

Steven Perron, who owns property at 2655 E Beechwood Trl, indicated that he had spoken with several of the neighbors and that those neighbors had no objection to the petition.

The Board closed the public comment portion of the hearing.

Kevin Carson indicated that the project did not appear to violate the HOA covenants and that he finds the project acceptable.

Kevin Carson made a motion to vote on the petition and Jim Douglas 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 22-13 – JASON BURNETT: DEVELOPMENT STANDARDS VARIANCE – To allow for construction of a 3,000 sq. ft. pole barn prior to construction of a home. [UDO Sec. 5.07 B]. Located at 4736 W 1100 N, New Palestine, Moral Township.

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

Sam Burnett represented the petitioner. He indicated that he plans to store boats in the barn and would like to construct a barn large enough for for his granddaughter to play basketball inside the barn.

The Board opened the hearing for public comment.

Bernice Harter, who owns property at 4696 W 1100 N, explained that raising the property to add the structure could contribute to existing flooding problems.

The Board closed the public comment portion of the hearing.

Sam Burnett indicated that the petitioner would need to raise the elevation of the property to build the structure.

Q: Kevin Carson – How large of a house do you plan to build?

A: Sam Burnett – Two-bed, one-bath small ranch.

Q: Kevin Carson – Would you build the barn if the Board limited the size to 1,000 sq. ft.?

A: Sam Burnett – Maybe. May not have enough room to store boats and building materials.

Kevin Carson indicated that a 3,000 sq. ft. building would be too large for the lot and out of character with the neighborhood.

Q: Jordan Caldwell – Does the petitioner accept Staff's recommended stipulations?

A: Sam Burnett – No.

A: Desiree Calderella – The petitioner previously said he agrees to the stipulation regarding building the home within two years but did not mention the stipulation regarding the size limit.

Mr. Burnett and Board discussed drainage in the neighborhood.

Q: Jordan Caldwell – Do you plan to live in the future house?

A: Sam Burnett – Yes.

Terry Knudson expressed concern that building the house could become cost prohibitive given the rising cost of building materials.

Desiree Calderella explained that if the Board approved the variance with the stipulation regarding construction of a house within two years and if the petitioner did not build the house, then the petitioner would need to reapply for the variance to extend the deadline.

Q: Dave Klene – How tall will the being be?

A: Sam Burnett – 16-feet.

The Board expressed concern that the lot did not include a house and that the petitioner could not guarantee that they would build a house or acquire an adjoining lot with a house.

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

- 1. The structure shall not exceed an area of 1,000 sq. ft. and a height of 20-feet.**
- 2. The variance shall be void if a single-family residence is not constructed and granted a final certificate of occupancy by April 12, 2025.**

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 22-17 – DANNY RIGDON: DEVELOPMENT STANDARDS VARIANCES – To allow a single-family home having a basement below the Flood Protection Grade in a Special Flood Hazard Area [UDO Sec. 5.20 E 2 b] and grant of a variance from floodplain standards for development on a lot over ½-acre [UDO Sec. 5.20 F 4 d]. Located at 5879 N PR 660 W, Fairland, Sugar Creek Township.

Desiree Calderella read the petition into the record and stated that Staff recommends denial. She also recommended stipulations of approval if the Board chose to approve the request.

Eric Wetzel, who is helping with the framing and foundation of the house, represented the petitioner. He explained that approval of the variance would result in an increase in the values of surrounding properties, the generation of additional tax revenue, and removal of the petitioner's flood insurance requirement. He explained that the petitioner intended to apply for a LOMR-F to remove the house from the FEMA designated floodplain. He explained that the petitioner had intended to construct the home with a crawl space, however, did not realize that the floor of the crawl space had to sit at grade. He explained that the petitioner had to excavate the building site to reach good soil, and that it did not make sense to fill that area back in to have a shallow crawl space. He explained that approval of the variance would allow the Planning Director to sign the Community Acknowledgment Form required as part of the LOMR-F application verifying that the structure complies with the County's floodplain requirements. He stated that the petitioner could have elevated the site and applied for a LOMR-F before constructing the house, but did not foresee the problem that would occur due to the

elevation of the crawl space. He explained that the petitioner intended to dig a pond and use fill dirt from the pond to elevate the area around the house.

The Board opened the hearing for public comment.

Vann Sanders, who owns property at 5694 N PR 660 W, expressed support for the petition.

The Board closed the public comment portion of the hearing.

Jeff Powell, who designed the Site Plan, was present. He provided a summary of the site design and LOMR-F approval process.

Q: Kevin Carson – What is the height from the concrete floor of the basement to the bottom of the first floor?

A: Eric Wetzel – 8’8”

Kevin Carson noted that at 8’8”, they area would typically be considered a basement rather than a crawl space.

Q: Kevin Carson – Will the petitioner install a swale to divert water from the creek?

A: Jeff Powell – The pond is not designed to accommodate water from the creek, the property includes an existing swale.

Q: Dave Klene – Did the petitioner originally intend to install a crawl space?

A: Jeff Powell – Yes, the Site Plan approved by the Technical Review Committee showed a house on a crawl space?

Q: Jordan Caldwell – How did the issue of the basement present itself?

A: Desiree Calderella – The building inspector noted the poured basement walls when he visited the site to complete an inspection. He did pass the footer inspection.

Q: Dave Klene – How far along are you in construction?

A: Eric Wetzel – The house is framed.

Eric Wetzel indicated that he and the petitioner has not foreseen an issue with installing the basement below the BFE because the first floor would sit above the BFE.

Q: Dave Klene – Is there a possibility of filling in the basement to bring the floor up to the correct elevation?

A: Eric Wetzel – Filling in the basement would impose an expense not needed because the petitioner plans to remove the house from the floodplain through the LOMR-F process.

Q: Jim Douglas – Could the petitioner have elevated the property prior to building the house?

A: Desiree Calderella – Yes, however the complex engineering standards applicable to placement of a basement in fill would have imposed additional time and cost to the petitioner.

A: Jeff Powell – The petitioner would have needed to excavate the site, place the engineered fill using lifts, and then excavated back down to the original soil to place the basement in fill to comply with the LOMR-F guidelines.

Kevin Carson indicated that the petitioner could have dug down to the elevation of the basement for the footers without excavating the area between the footers to install the basement.

Jordan Caldwell indicated that the petitioner is now asking for forgiveness.

Kevin Carson also indicated that the petitioner is now asking for forgiveness. He also expressed concern that the Board could not control use of the basement after approval of the variance and that a future homebuyer could purchase the home without knowledge of the subspeciality of the basement to flooding.

Eric Wetzel explained that a new basement built correctly will not accumulate water.

Kevin Carson explained that basements built on property with a high-water table will accumulate water.

Jeff Powell explained that the petitioner had originally intended to build a basement, however he had amended the site plan when the Planning Director informed him that County code would not allow a basement in the floodplain. He explained that a miscommunication had occurred between the time of approval of the site plan showing the crawl space and the construction of the basement. He indicated that the petitioner now requests the variance to allow them to apply for a LOMR-F.

Jeff Powell emphasized that after removal of the home from the floodplain through the LOMR-F process, the floodplain requirements would no longer apply.

Kevin Carson indicated that the petitioner had completed the process in the wrong order and that the floodplain requirements currently apply.

The Board, Ms. Calderella, and Mr. Powell discussed the process and implications of filling in the basement. Mr. Wetzel explained that the basement does not have an exterior opening to allow him to pour in fill material. Ms. Calderella indicated that she would need to conduct further research to determine the appropriate fill material.

Eric Wetzel indicated that a non-occupied space could flood without posing a problem.

Vann Sanders stated that his home has a basement and that his sump pump removes any water that accumulates in his basement.

Eric Wetzel emphasized that after removal of the home from the floodplain through the LOMR-F process, the floodplain requirements would no longer apply. Jordan Caldwell recommended that the petitioner withdraw the variance requests and proposed a plan to remedy the violation acceptable to the Planning Director.

Kevin Carson expressed concern with petitions that ask the board to remedy a self-imposed violation.

Jeff Powell requested a continuance on behalf of the petitioner to allow him time to conduct additional research to offer the Board an assurance that the basement is structurally sound.

Kevin Carson explained that a previous owner of the property had abandoned construction of a home with a basement, and asked that Staff and/or the petitioner investigate that situation.

Q: Jim Douglas – Has construction of the home stopped?

A: Desiree Calderella – No, the planning department has not placed a Stop Order at this time. We have informed the petitioner that they assume any risk associated with continued construction.

Q: Jim Douglas – Who made the decision to not follow the approved Site Plan?

A: Eric Wetzel – Yes, that was me, and I am asking for forgiveness because we always construct a basement in this type of situation.

Kevin Carson made a motion to table the petition and Jordan Caldwell seconded the motion. The petition was **TABLED unanimously**.

The Board did not require a Stop Work Order and informed the petitioner that they assume any risk associated with continued construction.

Discussion

TONY GIRDLER VIOLATION – North of and adjoining 6564 N Michigan Rd.

Desiree Calderella explained that the Shelby County Code Compliance Board had requested that she open a violation for non-permitted occupation of a Recreational Vehicle. The Board directed Ms. Calderella to open the violation.

BZA 22-08 – CURTIS KELLEY: DEVELOPMENT STANDARDS VARIANCE – To allow an accessory structure in the front yard [UDO Sec 5.04 C]. Located at 3577 W SR 44, Shelbyville, Hendricks Township.

Desiree Calderella explained the details of the case and stated that the Hearing Officer had approved this case on March 15, 2022.

BZA 22-11 – JUSTIN T FOWLER: DEVELOPMENT STANDARDS VARIANCES – To allow a front-loading greater than 8-feet forward of the main living area of a single-family dwelling [UDO Sec. 5.11 D 2] and a wellhead less than 100-feet from property in the A1 District [UDO 5.67 D]. Located at 9572 N 300 W, Fountaintown, Van Buren Township.

Desiree Calderella explained the details of the case and stated that the Hearing Officer had approved this case on March 15, 2022.

BZA 22-14 – ANTHONY LEAP: DEVELOPMENT STANDARDS VARIANCE – To allow a new single-family residence 42-feet front the proposed ROW (min. 50-foot setback required) [UDO Sec 2.04]. Located at 7765 S 250 E, Flat Rock, Nobel Township.

Desiree Calderella explained the details of the case and stated that the Hearing Officer had approved this case on March 29, 2022.

BZA 22-15 – SHELBY COUNTY FARM BUREAU COOPERATIVE ASSOCIATION INC.: DEVELOPMENT STANDARDS VARIANCE – To allow a 35-foot-tall accessory structure (max. height of 30-feet permitted) [UDO Sec 2.10]. Located at 5961 E 200 N, Shelbyville, Union Township.

Desiree Calderella explained the details of the case and stated that the Hearing Officer had approved this case on March 29, 2022.

Adjournment:

With no further business to come before the Board, Jordan Caldwell moved to adjourn, and Terry Knudson seconded the motion. The meeting was adjourned.

President	Date
Jim Douglas	

Secretary	Date
Kevin Carson	