

Shelby County Board of Zoning Appeals
Meeting Minutes
May 9, 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:

Kevin Carson made a motion to approve the minutes from February 14, 2023 & March 14, 2023. Dave Klene seconded the motion. The minutes were approved 5-0.

Old Business:

BZA 23-11 – ROBERTO CHAVEZ: Negative Findings of Fact

Kevin Carson made a motion to adopt the negative findings of fact as presented in the meeting materials. Terry Knudson seconded the motion. The negative findings of fact were approved 5-0.

New Business:

BZA 23-15 – LESTER SMITH: USE VARIANCE – To allow for construction of an accessory building for non-commercial storage as primary use of property in the R1 (Single-Family Residential) District. Located east of and adjoining 7392 W 500 N, Fairland, Sugar Creek Township.

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

Lester Smith requested approval to construct a 40'x60' or 40'x40' building on the property. He indicated that multiple people had expressed interest in purchasing the property, however they would like to build a building on the property. He indicated that if he builds on the property, he would prefer to build a 40'x60' building to use as a recreation area for his family. He indicated that he had torn down a building larger than 40'x60' and had filled in much of the property.

The Board opened the hearing for public comment.

James Bennett, who owns property at 7248 W 500 N, expressed concern that the petitioner would use the structure to store and work on vehicles associated with his off-site business and expressed personal concerns with the petitioner unrelated to the case.

The Board closed the public comment portion of the hearing.

Lester Smith indicated that he would consider retaining ownership of the property if he did not have issues with Mr. Bennett. He indicated that if he constructs the building, that he may store personal vehicles in the building.

Q: Nick Hartman – I'm assuming since it's residential now, he can't do anything out there with Lester's body shop?

A: Desiree Calderella – Correct.

The Board and Mr. Lester discussed the floodplain restrictions associated with the property.

Q: Jim Douglas – The staff stipulation says no more than 840 sq. ft., are you agreeable to that?

A: Lester Smith – No.

Desiree Calderella recommended that the Board limit the building to a size that they believe would discourage future use of the building for a business.

Lester Smith indicated that a 40'x60' building would allow him to use the building for recreational purposes for his family while storing cars in the back of the building.

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

- 1. The structure shall not exceed 40' x 60' (2,400 sq. ft.)**
- 2. The structure shall not be constructed in the Special Flood Hazard Area.**

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 23-04 – DOUGLAS C HUNT: USE & DEVELOPMENT STANDARDS VARIANCES – To allow for an automobile-oriented business (automobile salvage and repair) in the I2 (High Intensity Industrial) District. Also, to allow use of the existing gravel driveway (hard surface required) [UDO Sec. 5.20 C], use of existing gravel parking and maneuvering areas (hard surface required) [UDO Sec. 5.60 A], lack of dedicated ADA parking spaces [UDO Sec. 5.60 F 1], use of existing parking area encroaching more than 50% into the front yard setback [UDO Sec. 5.63 A 1 a], and unscreened outdoor storage of vehicles and equipment (6-foot-tall privacy fence and landscaping between outdoor storage area and street required) [UDO Sec. 5.59 A]. Located at 1796 W Washington Ave, Shelbyville, Addison Township.

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

Douglas Hunt explained that his tenant's business involves scrapping junk cars to build new cars. He indicated that his tenant has an 18-month lease, fifty cars on-site, and three or four workers. He explained that he did not know that the use would require the variances when he leased the building to his tenant. He indicated that he does not plan to turn the property into a junk yard and operates his concrete business at the rear of the property.

The Board opened the hearing for public comment.

David Hunt, legal half-owner of the property, asked about the legal consequences of Doug Hunt applying for the variance without his approval. He expressed concerns regarding deterioration of the condition of the property, storage of vehicles in the floodway, and contamination of the open drainage ways from leaking vehicles fluids. He indicated that the property should include a fence to screen the vehicles from the neighbors.

The Board closed the public comment portion of the hearing.

Doug Hunt indicated that he would have the ownership issue resolved in three to four

weeks. He explained that open ditches exist throughout the area and all property owners must protect the ditches from contamination.

Q: Dave Klene – Are you good with the stipulation of no more than forty vehicles?

A: Douglas Hunt – I would like fifty, but I will leave that up to you.

Jason Clark spoke about the legality of the Board voting on the variance without the consent of both owners.

Kevin Carson made a motion to continue the petition and Nick Hartman seconded the motion. The petition was **CONTINUED 5-0**.

**BZA 23-13 – RELIGIOUS RECONSTRUCTION ORGANIZATION, INC:
DEVELOPMENT STANDARDS VARIANCE – To allow intermittent use of 8’
x 14’ signage attached to a fence [UDO Sec. 5.73 D 3]. Located at 8700 S SR 9, Flat
Rock, Washington Township.**

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

John Wilson, Board member for the Religious Reconstruction Organization, provided an overview of the request. He indicated that variance approval would provide a low-cost signage option for the non-profit organization.

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

Q: Dave Klene – The 30’x20’ sign they had, was that in compliance for this piece of property?

A: Desiree Calderella – Not under the current ordinance, I don’t know if it was permitted under a previous ordinance.

John Wilson referenced a packet he provided to the Board showing properties in the County having signs on fences (see case file).

Desiree Calderella indicated that the County had already issued a permit for a permanent sign. She explained that if the Board approved the variance, the petitioner could install the permanent sign and the signs on the fence.

John Wilson indicated that the organization only plans to place three signs on the fence.

Kevin Carson and Jim Douglas indicated that they do not support allowing signs on the fence.

John Wilson explained that the organization could easily replace signs to display different

messages if permitted to attach the signs to the fence.

Q: Nick Hartman – How many free-standing signs can they do?

A: Desiree Calderella – One.

John Wilson explained that if the organization installed a permanent sign, they would need to raise the height of the sign or place the sign in front of the fence for visibility purposes.

Dave Klene made a motion to vote on the petition with a stipulation (maximum of three 8' x 14' signs on the fence) and Terry Knudson seconded the motion. The petition was **DENIED 4-1**, with Terry Knudson casting the dissenting vote.

The Board adopted the following Findings of Fact:

1. The excessive signage results in visual clutter potentially harmful to traffic safety, property values, community appearance, and the economic vitality of Shelby County.
2. The excessive signage results in visual clutter potentially harmful to surrounding property values and community appearance.
3. The UDO permits signage on the building and a ground sign exceeding the current maximum sign area requirement that would adequately identify the premises. Therefore, no practical difficulty exists which warrants allowing more signage on the property than on other commercial properties throughout the County.

BZA 23-16 – FOUNTAINTOWN CHRISTIAN CHURCH: DEVELOPMENT STANDARDS VARIANCES – To allow for a ground sign having an area of approximately 144 sq. ft. per side (maximum of 40 sq. ft. per side permitted) [UDO Sec. 5.74 B 4 a], a height of 15.5-feet (maximum 6-foot height permitted) [UDO Sec. 5.74 B 4 b], and animated components (not permitted) [UDO Sec. 5.73 E 1 c]. Located at 797 W Brookville Rd, Fountaintown, Van Buren Township.

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

Kirsten McAfee with SignCraft Industries represented the petitioner. She explained that the Church had indicated that the cornfields would hinder visibility of a smaller sign from the roadway. She indicated that the Church could program the EMC portion of the sign to comply with the recommended stipulations. She provided the Board with a letter from Watchfire (owner of the EMC program).

The Board opened the hearing for public comment.

Larry Conn, who lives at 617 W Brookville Rd, asked if the Church could turn off the

EMC portion of the sign at dusk. He indicated that the light from an EMC sign would conflict with the rural area and that the size of the sign seems excessive for the area. He indicated that the existing sign has visibility from the roadway.

John Ragle, who owns property at 689 W Brookville Rd, expressed concern with placement of the sign closer to his house and the impacts of lighting from an EMC sign to the residential area.

The Board closed the public comment portion of the hearing.

Q: Dave Klene – Would the church be agreeable to a sign the same size as they have now at the same location?

A: Kirsten McAfee – If you tell them no to the bigger sign.

Kirsten McAfee provided a rendering of a sign not exceeding the size of the existing sign to the Board (see case file).

Q: Nick Hartman – How bright will that normally be?

A: Kirsten McAfee – Maximum brightness level will be 0.46-footcandles. It will be automatically dimmed and will control the brightness.

Q: Terry Knudson – Are there any other stipulations that you are comfortable or uncomfortable with?

A: Kirsten McAfee – No, they want the larger sign if they can, they will agree to everything else.

Jim Douglas indicated that he favored a smaller sign out of respect for the neighborhood.

Q: Jim Douglas – The letters will always be illuminated?

A: Kirsten McAfee – Correct.

Dave Klene 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. The sign shall not exceed the area and height of the existing sign.**
- 2. The content of the sign shall change no more than once every thirty seconds and shall transition by an instant change/slideshow effect. The sign shall not include motion picture capabilities.**
- 3. The sign shall include a sensor or other device that automatically determines the ambient illumination and be programmed to automatically dim according to ambient light conditions.**
- 4. The EMC portion of the sign shall be turned off between 10 PM and 5 AM.**

5. **The brightness level for any digital display shall be calibrated for less than 0.2-foot candles above ambient light levels, as measured at the right-of-way 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.

V22-19 – H FARMS LLC: ZONING VIOLATION - Storage of commercial merchandise (boats) in the RE (Residential Estate District) and A4 (Agricultural Commercial) District. Located at 5590 W 1100 N, Fountaintown, Moral Township.

Desiree Calderella provided an overview of the zoning violation.

The Board agreed that a violation exists on the property.

Louie Koch, a neighboring property owner, explained that the owner had begun storing boats on the property this past year and had recently begun moving the boats off the property.

Kevin Carson made a motion to fine the property \$100 per day that the boats remain on the property past May 16, 2023. Nick Hartman seconded the motion. The motion was **APPROVED 5-0.**

Discussion

BZA 22-30 – ORLANDO MOJICA: DEVELOPMENT STANDARDS VARIANCE. Located at 4951 W 700 N, Fairland, Moral Township

Desiree Calderella explained the details of the case and stated that the Hearing Officer had approved this case on March 14, 2023.

BZA 23-06 – STEPHEN COX: DEVELOPMENT STANDARDS VARIANCE. Located at 9875 N 675 W, Fairland, Moral Township.

Desiree Calderella explained the details of the case and stated that the Hearing Officer had approved this case on March 14, 2023.

BZA 23-13 – SECOND CIRCLE INVESTMENTS, LLC: DEVELOPMENT STANDARDS VARIANCE. Located at 385 W Carey St, Fairland, Brandywine Township.

Desiree Calderella explained the details of the case and stated that the Hearing Officer had approved this case on March 30, 2023.

BZA 23-14 – MICHAEL MOULDER: DEVELOPMENT STANDARDS VARIANCES. Located at 8028 S Division Rd, Shelbyville, Washington Township.

Desiree Calderella explained the details of the case and stated that the Hearing Officer had approved this case on April 14, 2023.

Zoning Violations

Wood - 4942 N Brandywine Rd

Desiree Calderella stated that she had sent the owner certified mail citing the zoning violation. She explained that she had first spoken with the wife, and the wife said they did not run a business on the property however had moved vehicles from their business to the property after their business location had closed. She explained that she had suggested to the wife that she provide the registrations for all vehicles on the property to show that they personally own the vehicles. She explained that she had then spoken to the husband, and that he had refused to provide the registrations to the vehicles or to come to the next BZA meeting, and that he indicated that they would move from the property.

Kevin Carson indicated that he had counted twenty-one vehicles on the property on two occasions. He indicated that the Board had previously denied a variance for the property, therefore the owner obviously knows the property is in violation.

Desiree Calderella indicated that the property owner had also accused the County of being paid-off to cite his property with a violation.

Dave Klene indicated that the Board had only asked him to obey the existing law. He suggested a financial penalty.

Kevin Carson reference other violations in the County that have come into compliance after the Board issued a fine.

Dave Klene asked if Ms. Calderella would contact the owners again to ask them to bring the property into compliance.

Ms. Calderella indicated that she would not call the owner given the tone of their past conversations, however, would send them another certified letter notifying them of hearing of the violation at the next BZA meeting.

Rules of Procedure

Desiree Calderella indicated that the proposed rules generally reflect the Plan Commission rules discussed at the last Plan Commission meeting.

Adjournment:

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

President	Date
Jim Douglas	

Secretary	Date
Kevin Carson	