

**Shelby County
Board of Zoning Appeals**

November 14, 2023 at 7:00 PM

Table of Contents

| | |
|--|-----------|
| Agenda..... | 3 |
| BZA 23-39 Gabe & Elyzabeth Bulmer – Use & Development Standards Variances | 4 |
| Staff Report | 4 |
| Site Plan | 9 |
| BZA 23-41 James Tracy & Sheryl Lynne Vannoy – Special Exception..... | 10 |
| Staff Report | 10 |
| Type 3 Home Business Standards | 14 |
| Petitioner’s Statement of Intent | 16 |
| Petitioner’s Findings of Fact | 17 |
| Site Plan | 18 |
| V23-14 Danny & Maria Rigdon – Zoning Violation | 19 |
| Staff Report | 19 |
| September 2023 Email from FEMA Representative Outlining Options to Correct Violation ... | 21 |

MEETING AGENDA

Shelby County Board of Zoning Appeals November 14, 2023, 7:00 P.M.

CALL TO ORDER

ROLL CALL

APPROVAL OF MINUTES

Minutes from the October 10, 2023 meeting.

OLD BUSINESS

None.

NEW BUSINESS

BZA 23-39 – GABE & ELYZABETH BULMER: USE & DEVELOPMENT STANDARDS VARIANCES. Located at 8256 W 725 S, Edinburgh, Jackson Township.

BZA 23-41 – JAMES TRACY & SHERYL LYNNE VANNOY: SPECIAL EXCEPTION. Located at 6179 W 900 N, Fountaintown, Moral Township.

V23-14 – DANNY & MARIA RIGDON: ZONING VIOLATION. Located at 5879 N PR 660 W, Fairland, Brandywine Township.

DISCUSSION

APPROVED HEARING OFFICER CASES

BZA 23-40 – STACIA PING: DEVELOPMENT STANDARDS VARIANCE. Located at 2405 S PR Phelps Ln, Shelbyville, Shelby Township. *Approved November 2, 2023.*

ADJOURNMENT

The next regular meeting of the Shelby County Board of Zoning Appeals is scheduled for Tuesday, **December 12, 2023 at 7:00 PM.**

Property Details

Location: 8256 W 725 S, Edinburgh, Jackson Township.

Property Size: 2.04-acres.

Current Land Use: Vacant.

Zoning Classification:

RE (Residential Estate)

Intent: This district is established for single-family detached dwellings in a rural or country setting.

Development Standards: Promote low-impact 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 | A1 | Cropland |
| South | A1 | Estate Residential |
| East | A1 | Cropland |
| West | A1 | Cropland |

Staff Report

Case Number: BZA 23-39

Case Name: Gabe & Elyzabeth Bulmer – Use & Development Standards Variances

Request

Variance of Use to allow for placement of a mobile home in the RE (Residential Estate) District.

Variances of Development Standards to allow:

1. A lot with 40-feet of road frontage (minimum 160-feet of road frontage required in the RE District);
2. A 40-foot-wide lot (minimum 160-foot lot width required in the RE District);
3. For a 1,140 sq. ft. mobile home (minimum dwelling size of 1,600 sq. ft. required in the RE District);
4. A residential driveway within 10-feet of the property line;
5. Lack of a paved parking pad.

Code Requirement

UDO Section 2.11 – RE District Intent, Permitted Uses, and Special Exception Uses

UDO Section 2.12 – RE District Development Standards: Minimum Lot Width: 160-feet.

UDO Section 2.12 – RE District Development Standards: Minimum Lot Frontage: 160-feet.

UDO Section 2.12 – RE District Development Standards: Minimum Dwelling Size: 1,600 sq. ft.

UDO Section 5.18 D: Distance to Property Line: All driveways shall be at least ten (10) feet from the side property line.

UDO Section 5.60 A: Surface: Parking of vehicles shall not be permitted on lawns or other pervious-surfaced areas of a lot.

Purpose of Requirements:

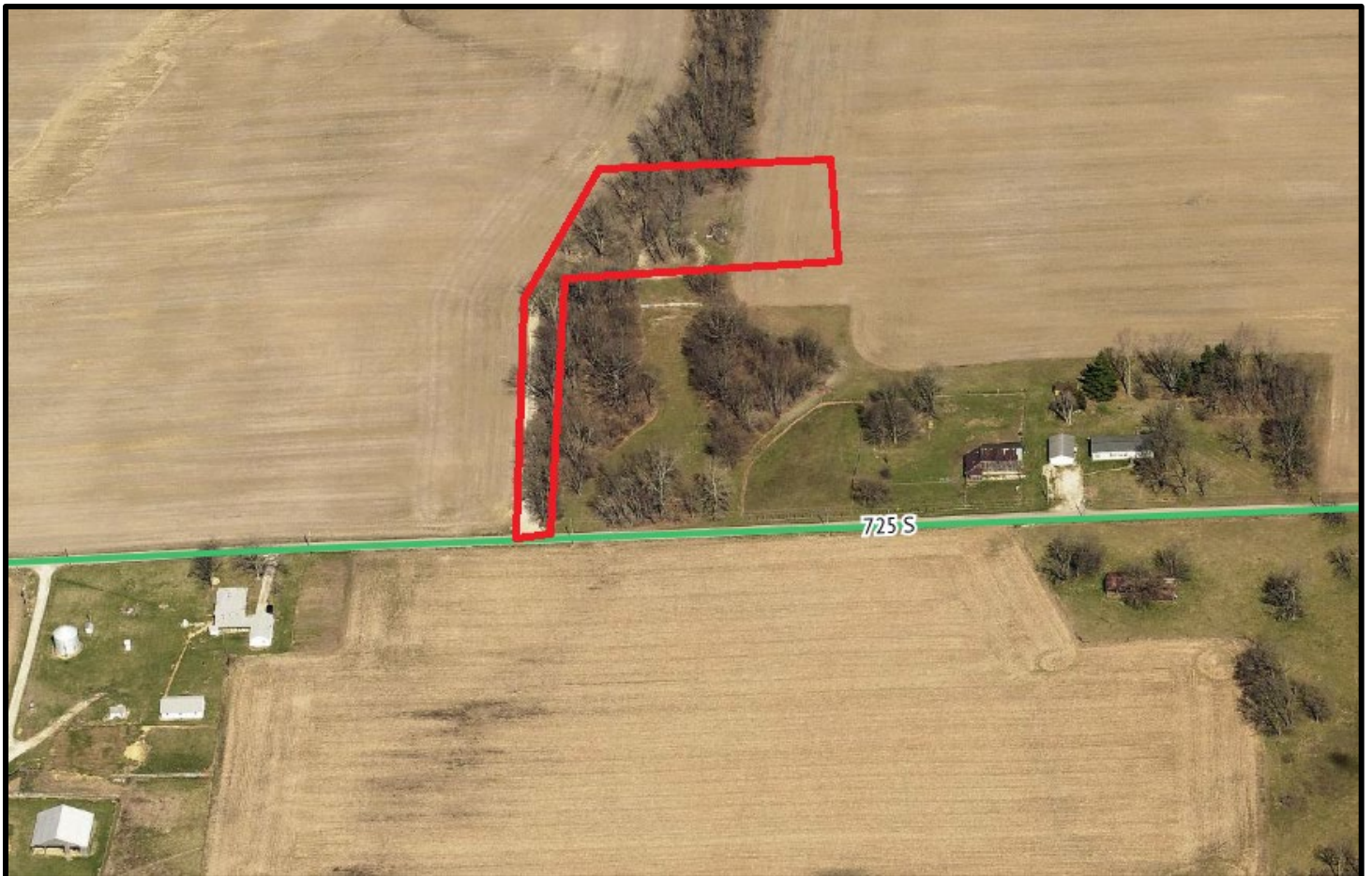
The aesthetic characteristics of mobile homes differ from the aesthetic characteristics of modular and stick-built single-family homes. Therefore, prohibiting mobile homes outside of manufactured and mobile home parks serves to protect the character of neighborhoods and surrounding property values. The minimum dwelling size requirement maintains aesthetic consistency between residential homes in rural neighborhoods.

The minimum road frontage and minimum lot width requirements discourage the creation of 'flag lots.' Flag lots represent disorderly development which could lead to future property line disputes and cause difficulty for visitors or emergency vehicles in locating the house from the public road.

The driveway setback requirement limits nuisance impacts to adjacent property associated with the use of driveways, such as noise and migration of dust.

The paved parking area requirement limits vehicle oils and fluids from leaking directly into the ground and protects the aesthetic quality of neighborhoods.

Property Map



Case Description

- The petitioner plans to reside within a 15'2" x 76' (1,140 sq. ft.) mobile home placed on the property.
- The subject property was created in October of 2023 by a property line adjustment. The lack of required lot width and road frontage allowed the adjacent agricultural parcel to retain additional farmland.
- The mobile home would sit over 400 feet from the public road and a wooded area would screen the mobile home from the public road.
- The property adjoins one residential property which includes a manufactured home and no paved parking pad.
- The Technical Review / Site Plan Committee has approved a Site Plan for the new construction, subject to approval of the variances.
- The UDO only permits installation of mobile homes in mobile home or manufactured home parks. Modular homes and stick-built homes are permitted in the RE District. Mobile homes, manufactured homes, and modular homes are constructed, in part, off-site, however zoning and building code classifies each dwelling as a different type of construction. Primary differences include:

| | Mobile Home | Manufactured Home | Modular Home |
|----------------------|--|--|--|
| Certification | Federal Manufactured Housing Construction and Safety Standards Law | Federal Mobile Home Construction and Safety Standards | State & local residential building code |
| Dimensions | At least 8-feet in width | Minimum of 23-feet in width for 60% of length | Any dimension |
| Size | Any size | Over 950 sq. ft. | Typically, larger than mobile and manufactured homes |
| Foundation | May be tied with perimeter skirting | Must be on a permanent foundation in accordance with state & local residential building code | Must be on a permanent foundation in accordance with one- & two-family building code |

- Code designates the proposed structure as a mobile home due to the home having a width of less than 23 feet.
- Use variances expire at the time the property changes ownership. Therefore, any future owner of the property would be required to remove the mobile home or obtain a new variance.

Staff Analysis of Findings of Fact

Use Variance

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

Staff Analysis: The Technical Review Committee has approved a Site Plan for the mobile home and the County will require Improvement Location, Building, Electric, Plumbing, and Septic permits prior to construction. The mobile home would sit over 400 feet from the public road and a wooded area would screen the mobile home from 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: The property adjoins one residential property which includes a manufactured home. Therefore, the mobile home would not conflict with adjacent residential development.

- 3. State Requirement: The need for the variance arises from some condition peculiar to the property involved.**

Staff Analysis: The property adjoins one residential property which includes a manufactured home. Approval of the variance would allow for residential development consistent with the residential development in the area.

- 4. 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 now allow for residential development of the property consistent with residential development in the area.

- 5. State Requirement: The approval does not interfere substantially with the Comprehensive Plan.**

Staff Analysis: Placement of the mobile home would not result in the residential density of the area exceeding one lot for every five acres as recommended for agricultural areas by the Comprehensive Plan.

Development Standards Variances

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

Staff Analysis: The Technical Review Committee has approved a Site Plan for the mobile home and the County will require Improvement Location, Building, Electric, Plumbing, and Septic permits prior to construction.

- 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: Approval of the variances from the lot width, lot frontage, and driveway setback requirements would allow for residential development of a parcel created in a manner that retained farmland on an adjacent agricultural parcel. Approval of the variances from the dwelling size and parking pad requirements would allow for residential development consistent with the size of the home and lack of paved parking pad on the one adjacent residential 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 for residential development of the property consistent with residential development in the area.

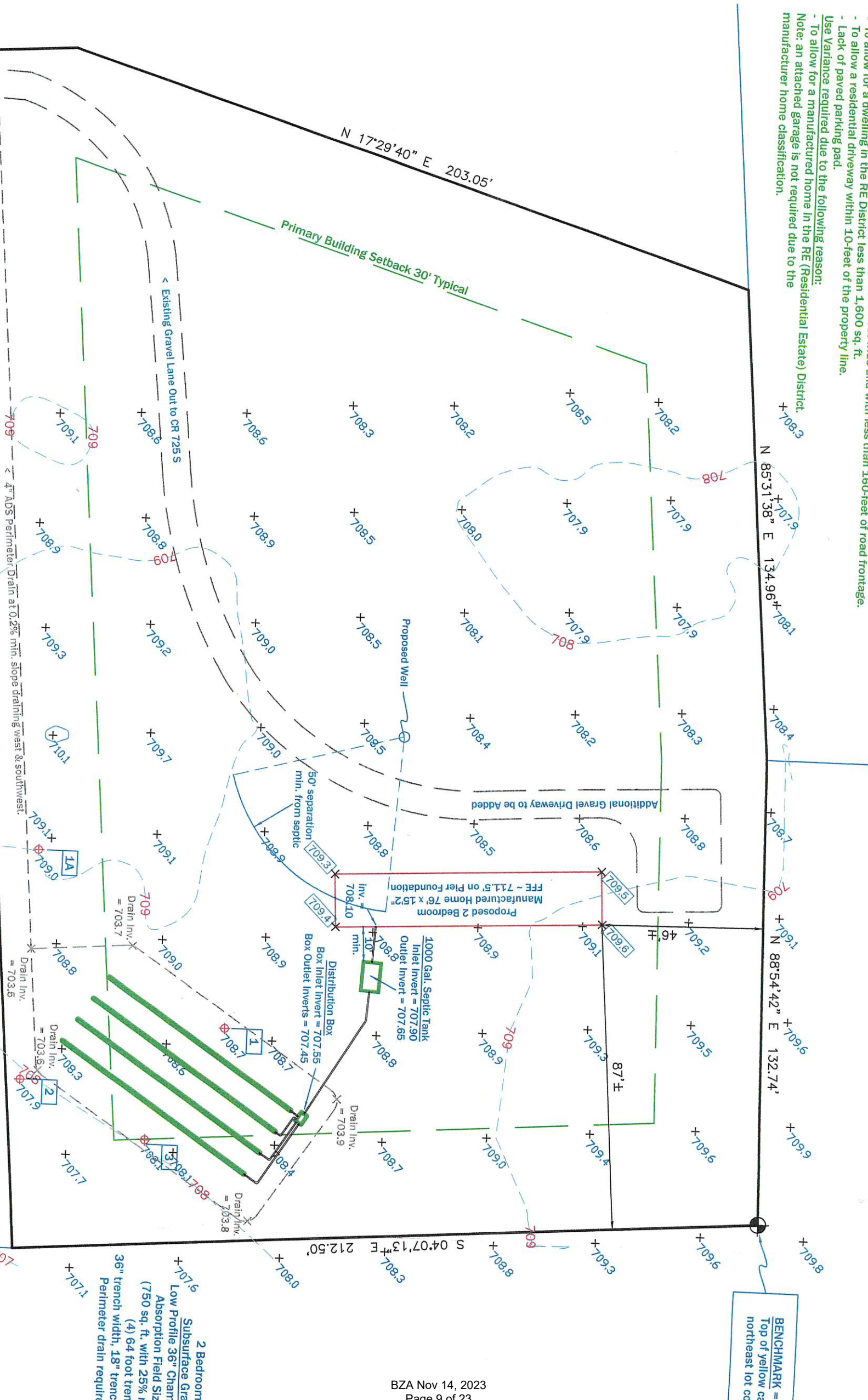
Staff Recommendation

APPROVAL primarily because the property adjoins one residential property which includes a manufactured home and no paved parking pad. Approval of the variances would allow for residential development consistent with the residential development in the area. Also, the lack of required lot width and road frontage allowed the adjacent agricultural parcel to retain additional farmland.

Applicant/Owner Information

| | | | |
|------------|--|--------|--|
| Applicant: | Gabe & Elyzabeth Bulmer 8256 W 725 S Edinburgh, IN 46124 | Owner: | Jerry Drake 6504 S 850 W Edinburgh, IN 46124 |
|------------|--|--------|--|

- To allow for a dwelling in the RE District less than 1,600 sq. ft.
 - Lack of paved parking pad.
- Use Variance required due to the following reason:
- To allow for a manufactured home in the RE (Residential Estate) District.
- Note: an attached garage is not required due to the manufacturer home classification.



BENCHMARK =
 Top of yellow cap
 northeast lot cor

Property Details

Location: 6179 W 900 N,
 Fountaintown, Moral Township.

Property Size: 21.12-acres.

Current Land Use: Farmstead.

Zoning Classification:

A1 (Conservation Agricultural)

Intent: This district is established for the protection of agricultural areas and buildings associated with agricultural production.

BZA: Protect the integrity of land and operations within the Conservation Agricultural District. Allow a Special Exception when potential impacts to prime agricultural land on adjacent property and rural residential home-sites can be reasonably avoided.

Future Land Use per Comp Plan

Suburban Residential

This purpose of this category is for the transition of land use from agricultural and estate residential uses to low to medium-density, single-family residential subdivisions as water and sewer facilities become available.

| | Zoning | Land Use |
|-------|--------|--------------------------------------|
| North | A1/RE | Cropland / Estate Residential |
| South | A1 | Cropland |
| East | RE | Vacant / Cropland |
| West | A1/R1 | Cropland / Single-Family Residential |

Staff Report

Case Number: BZA 23-41
Case Name: James Tracy & Sheryl Lynne Vannoy –
 Special Exception

Request

Special Exception to allow a Type 3 Home Business (small trucking company) in the A1 (Conservation Agricultural) District (Type 3 Home Businesses only permitted in the A2 District).

Code Requirement

UDO Section 2.03 – A1 District Intent, Permitted Uses, and Special Exception Uses.

Purpose of Requirements: The UDO designates Special Exception uses for each zoning district. Unlike a use variance, the petitioner does not have to prove that they cannot use or improve the property in a reasonable manner to obtain approval of a Special Exception. The petitioner must only prove that the design and use of the Special Exception would mitigate potential impacts to surrounding properties and to the character of the area, and that the proposed Special Exception is consistent with the intent of the zoning district and Comprehensive Plan.

Property Map



Case Description

- The petitioner currently operates a small trucking business from the property. The petitioner uses most of the property for crop production and also lives on the property.
- Summary of Business Operations:
 - Off-site operation of dump trucks and trailers hauling aggregate, agricultural products, and occasionally equipment.
 - No on-site employees, except when a truck driver services a vehicle. Truck drivers pick up trucks in the morning and return trucks in the evenings.
 - Operations typically occur on weekdays. Trucks leave the property between 5 AM and 6 AM and return to the property between 4 PM and 8 PM.
 - Storage of trucks and trailers on a gravel surface behind an existing 2,800 sq. ft. barn.
 - No planned signage or other property improvements.
- The petitioner indicated that the business would comply with all standards applicable to Type 3 Home Based Businesses identified in the Unified Development Ordinance (see attached standards).
- In September of 2023, the Planning Director received a complaint regarding noise associated with use of the property for a trucking business. The Planning Director issued a violation letter for operation of a non-permitted use in the A1 District, and the petitioner promptly contacted the Planning Director to inquire about corrective action. The petitioner chose to apply for a Special Exception.
- The UDO includes subjective standards related to noise generated by a Type 3 Home Business (see attached standards, Section 5.35 D). If a neighboring property owner filed a complaint regarding noise related to a permitted Type 3 Home Business, the Planning Director would forward the complaint to the BZA to determine if the noise produced violated the standards of the ordinance.
- The property lies within an agricultural area relatively isolated from residential development. The closest home lies approximately 400-feet from the driveway of the property.
- The UDO does allow Type 3 Home Businesses by right and without BZA approval in the A2 (Agricultural) District. Properties in the A2 District are typically smaller in area and lie within more densely populated rural areas than properties in the A1 District. Therefore, the ordinance intent of prohibiting Type 3 Businesses in the A1 District without BZA approval likely relates to conservation of farmland rather than to potential impacts of the business use to surrounding residential properties.

Staff Analysis of Findings of Fact

1. UDO Requirement: The proposed special exception is consistent with the purpose of the zoning district and the Shelby County Comprehensive Plan.

Staff Analysis: The UDO establishes the A1 District for the protection of agricultural areas and buildings associated with agricultural production. The UDO states: *Protect the integrity of land and operations within the Conservation*

Agricultural District. Allow a Special Exception when potential impacts to prime agricultural land on adjacent property and rural residential home-sites sites can be reasonably avoided. Use of a portion of the property for a small trucking business would not result in removal of cropland from production or impact use of adjacent properties for agricultural purposes. In areas designated for Suburban Residential Development by the Comprehensive Plan, the Plan recommends the transition of land use to medium-density, single-family residential subdivisions as water and sewer facilities become available. Water and sewer facilities are not currently available in the area.

2. UDO Requirement: The proposed special exception will not be injurious to the public health, safety, morals and general welfare of the community.

Staff Analysis: The small business provides a trucking-related service to the community and does not pose any significant environmental hazard.

3. UDO Requirement: The proposed special exception is in harmony with all adjacent land uses.

Staff Analysis: Use of a portion of the property for a small trucking business would not result in removal of cropland from production or impact use of adjacent properties for agricultural purposes. The trucking business also engages in hauling of agricultural products.

4. UDO Requirement: The proposed special exception will not alter the character of the district; and

Staff Analysis: Use of a portion of the property for a small trucking business would not result in removal of cropland from production or impact use of adjacent properties for agricultural purposes. The trucking business also engages in hauling of agricultural products.

5. UDO Requirement: The proposed special exception will not substantially impact property value in an adverse manner.

Staff Analysis: Use of a portion of the property for a small trucking business would not result in removal of cropland from production or impact use of adjacent properties for agricultural purposes.

Staff Recommendation

APPROVAL primarily because the UDO does allow Type 3 Home Businesses by right and without BZA approval in the A2 (Agricultural) District. Properties in the A2 District are typically smaller in area and lie within more densely populated rural areas than properties in the A1 District. Therefore, the ordinance intent of prohibiting Type 3 Businesses in the A1 District without BZA approval likely relates to conservation of farmland rather than to potential impacts of the business use to surrounding residential properties. Use of a portion of the property for a small trucking business would not result in removal of cropland from production or impact use of adjacent properties for agricultural purposes. The trucking business also engages in hauling of agricultural products.

Staff recommends the following stipulations:

1. Operation of the business shall comply with Section 5.35 HB-03: Type 3 Home Business Standards of the Unified Development Ordinance.
2. Outdoor storage of trucks and trailers shall only be permitted directly behind the existing 2,800 sq. ft. barn in an area not to exceed 0.2-acres.

Applicant/Owner Information

Applicant: James Tracy & Sherly Lynne Vannoy Owner: Same
6179 W 900 N,
Fountaintown, IN 46130

Attorney: Jacob S. Brattain, McNeely Law LLP
2177 Intelliplex Drive, Ste. 251
Shelbyville, IN 46176

Home Business Standards (HB)

5.35 HB-03: Type 3 Home Business Standards

This Home Business Standards section applies to the following zoning districts:

A1 **A2** **A3**

The following standards apply:

- A. Permits: All Type 3 Home Businesses shall obtain a Land Use Certificate.
- B. Permissible Home Businesses:
 1. Permitted: The Type 3 Home Business shall be limited to woodworking, small engine repair, lawn service, assembly of products, automobile repair, welding, contracting business, landscaping business, light manufacturing or a similar use as determined by the Zoning Administrator. Use of the property or home for permitted agricultural land uses shall not be considered a Type 3 Home Business.
 2. Prohibited: The Type 3 Home Business shall not include any kind of direct retail sales.
 3. Discretion: Businesses not specifically listed above shall be interpreted by the Zoning Administrator as to whether the business is permitted as a home business or not.
- C. Personnel:
 1. Residency: The operator of the Type 3 Home Business shall reside in the house.
 2. Employees: Up to ten (10) employees may be employed by and work on site.
- D. Operations:
 1. Nuisance: The Type 3 Home Business shall not generate offensive noise, vibration, smoke, odors, dust, heat, glare, or electrical disturbances.
 2. Hours: The hours of operation of the Type 3 Home Business shall not interfere with the use and enjoyment of the rural area in which it is located.
- E. Design:
 1. Primary Structure:
 - a. The office component of the Type 3 Home Business may be operated in the primary structure (the home).
 - b. The Type 3 Home Business shall not exceed five percent (5%) of the square footage of the primary structure.
 - c. There shall be no evidence of the Type 3 Home Business from alterations to the exterior of the residence. However, the character of the property may show minimum evidence of its business use, including: exterior storage of materials, vehicles or equipment used in the Type 3 Home Business.
 2. Accessory Structure:
 - a. The Type 3 Home Business shall be primarily conducted within an accessory structure
 - b. The Type 3 Home Business may consume one hundred percent (100%) of the square footage of the accessory structure.
 3. Parking and Loading:
 - a. All off-street parking or loading facilities shall meet the requirements of the applicable zoning district.
 - b. No part of a minimum required yard shall be used for off-street parking or loading purposes.
 - c. There shall be no more than fourteen (14) operable vehicles parked on the site at any time, including the vehicles used by residents of the home.

Home Business Standards (HB)

4. Outdoor Storage:
 - a. No commercial vehicles shall be parked or stored outside between 9:00 p.m. and 5:00 a.m. unless parked or stored behind the accessory structure use for the Type 3 Home Business.
 - b. No outdoor storage of products, materials, supplies, waste, scrap, or the like shall be permitted unless fully within an opaque fence enclosure with gate tall enough to screen the outdoor storage. Fences used for screening shall not exceed eight (8) feet in height. The fenced enclosure shall not exceed 1,000 square feet in area and shall meet all setback requirements for an accessory structure. A fenced enclosure for outdoor storage shall not be located forward of the accessory structure used for the Type 3 Home Business.
5. Signs: One (1) wall sign is permitted on the accessory structure and it shall not exceed ten (10) square feet in sign area. The wall sign shall be fully located within ten (10) feet above ground level. Materials shall be aesthetically compatible and complementary to the accessory structure, specifically to make sure the sign is subtle and consistent with residential and neighborhood character. No special lighting shall be permitted to illuminate the sign.

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: Overnight parking of commercial trucks at the Owner's residence.
Owner operates dump trucks and trailers hauling aggregate, agricultural products, and occasionally equipment.
Owner's drivers pick up trucks from the residence in the morning and drop it back off in the evening after hauling.

2. Days & Hours of Operation: Drivers pick up the truck between 5-6am and drop off the truck between 4-9pm. Normally M-F, occasionally weekends during harvest/busy season.

3. Maximum Number of Customers per Day/Week/Month: No customers visit the property - the drivers pick up the truck in the morning and return it in the evening. Typically, unless repairs are necessary, drivers only exit and enter the property once per day.

4. Type and Frequency of Deliveries: No deliveries will be made at the property.

5. Description of any Outdoor Storage: The trucks and trailers will be parked at the rear of the property. There is existing gravel parking on site and the storage is shielded by an existing accessory structure.

6. Description, Size, and Placement of any Signage: There is no signage at the property and none will be necessary.

7. Description of Waste Disposal: There will be no commercial waste generated from the requested use.

8. Existing and/or Proposed Building and Site Improvements Pertaining to Proposed Use (ex. parking lot, landscaping, commercial upgrades to building, etc.): The proposed use will utilize existing improvements at the property. No new construction or upgrades are planned or necessary at this time.

**SPECIAL EXCEPTION
FINDINGS OF FACT**

Applicant: Jacob Brattain, McNeelyLaw LLP on behalf of James Tracy and Sheryl Lynne Vannoy

Case #: _____

Location: 6179 W 900 N, Fountaintown, 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 Special Exception. Using the lines provided, please explain how your request meets each of these criteria.

1. **Comprehensive Plan:** The proposed special exception is consistent with the purpose of the zoning district and the Shelby County Comprehensive Plan.

The Comprehensive Plan allows for Type 1 & 3 home-based businesses for the zoning classification, and Type 3 home-based businesses are permitted under special exceptions. Since operations will not adversely effect the surrounding properties or general welfare of the community, we believe the use is appropriate.

2. **General Welfare:** The proposed special exception will not be injurious to the public health, safety, and general welfare of the community.

Owners have lived at the property since 1990 and has operated trucks out of the Property since 1997. Agricultural operations in the area use similar equipment without issue.

3. **Harmony:** The proposed special exception is in harmony with all adjacent land uses.

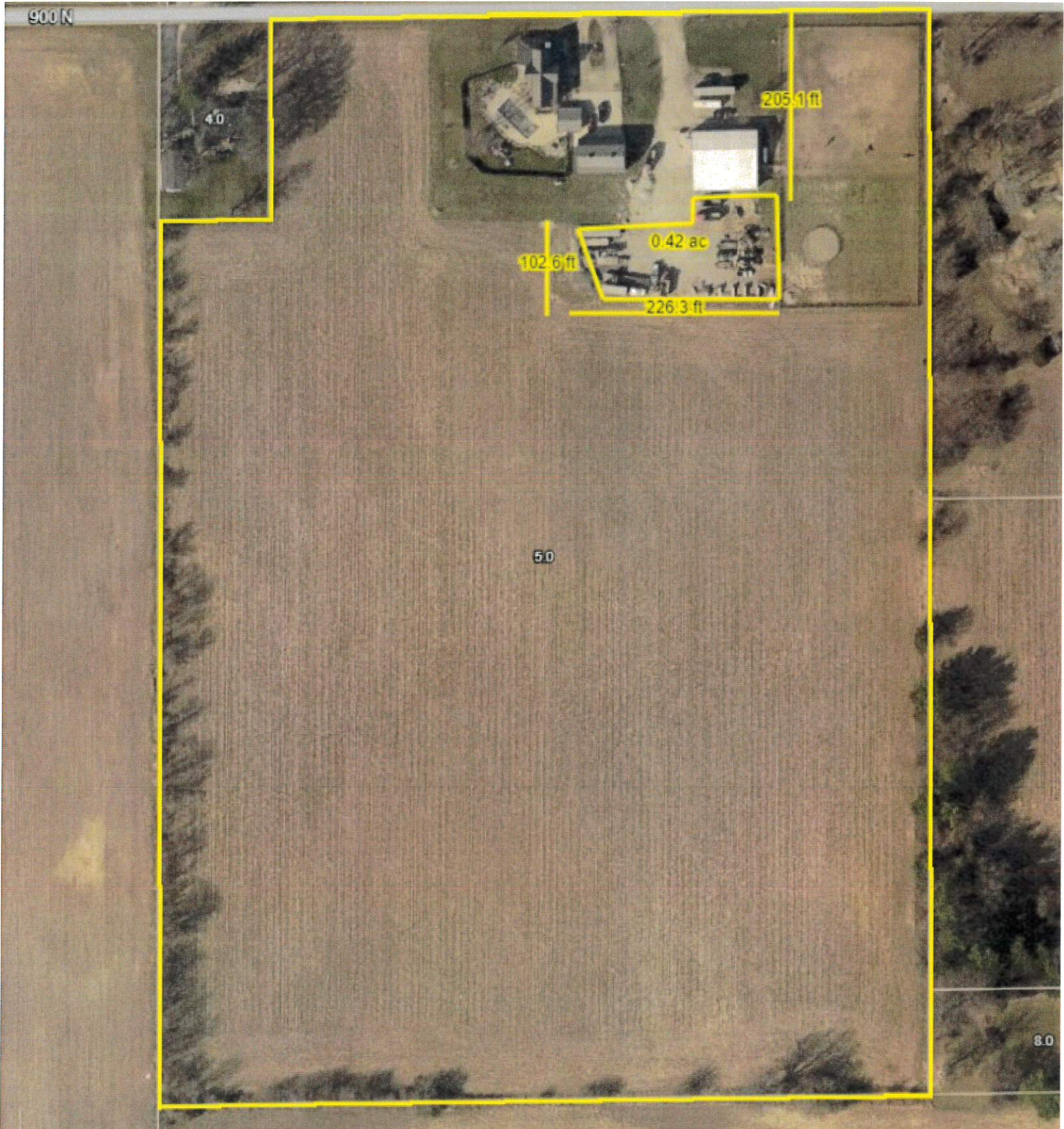
Type 3 home businesses are permitted in the A1 zoning district so long as the use is compatible with the area, and in this area, similar agricultural operations utilize the same equipment as permitted uses.

4. **Character of the District:** The proposed special exception will not alter the character of the district.

Similar agricultural operations in this district utilize equipment proposed in this petition. The property is already set up and has not clashed with any other property in the district.

5. **Property Value:** The proposed special exception will not substantially impact property value in an adverse manner.

The operations of the business will be limited to only a few employees, infrequent traffic, and no public customers. The intended use is a continuance of previous operations and has not affected any surrounding properties.



Zoning Violation

Case Number: V23-14
Property Owner: Danny & Maria Rigdon
Location: 5879 N PR 660 W, Fairland, Brandywine Township

Violation

Construction of a single-family home having a basement below the Flood Protection Grade in a Special Flood Hazard Area.

UDO Section 5.20 E 2 b: Residential Structures: New construction or substantial improvement of any residential structure (or manufactured home) shall have the lowest floor; including basement (portion of a structure having its floor sub-grade (below ground level) on all sides), at or above the FPG (two feet above the base flood elevation). Should solid foundation perimeter walls be used to elevate a structure, openings sufficient to facilitate the unimpeded movements of floodwaters shall be provided.

Case History

October 2021 – The property owner obtained a permit to construct a single-family residence in the Special Flood Hazard Area Flood Fringe. The plans approved by the County included a crawl space having a floor below the Flood Protection Grade but at the same elevation as the lowest adjacent grade, allowed per Federal and County floodplain regulations. The approved plans did not authorize a subgrade basement.

February 2022 – The Shelby County Building Inspector conducted a framing inspection and noted non-permitted and uninspected basement walls.

April 2022 – The property owner applied for a variance to allow for a basement below the Flood Protection Grade in a Special Flood Hazard Area. The Board voted to continue the petition indefinitely to allow the owner time to propose a plan to remedy the violation. The Board did not require a Stop Work Order and informed the property owner that they assume any risk associated with continued construction.

September 2022 – The property owner submitted a LOMR-F application to FEMA to remove the structure from the floodplain based on fill placed around the structure. The Plan Commission attorney at the time advised the Planning Director that she could sign-off on the LOMR-F application with a comment that the structure violated the provisions of the County's floodplain ordinance.

November 2022 – FEMA issued the County a Letter of Potential Violation citing a potential violation of National Flood Insurance Program regulations, due to presence of a basement below the Base Flood Elevation. FEMA and DNR indicated that the Planning Director had placed the County, as well as herself, on record for improperly signing-off on the LOMR-F application.

January 2023 – FEMA found the structure in violation and ordered the property owner and the County to address the violation. FEMA provided the following options to bring the structure into compliance: 1) lower the exterior grade on one side to the elevation of the interior grade, install vents, etc. 2) fill the basement to an elevation equal to the exterior grade 3) do a combination of the two above to get the interior and exterior grade at the same elevation on at least one side, install vents, etc.

July 2023 – The property owner chose to pursue option 1 and lowered the exterior grade on one side of the structure to the elevation of the interior grade. However, the ground sloped back up away from the basement to protect the area from potential floodwaters. The property owner submitted an elevation certificate to the County, DNR, and FEMA to remedy the violation.

September 2023 – After review of the Elevation Certificate, FEMA determined that the area below the Flood Protection Grade would still qualify as a basement due to lack of positive slope away from the structure out into the floodway. In summary, FEMA made the following statements about the options to bring the structure into compliance:

1. Lower the exterior grade on one side to the elevation of the interior grade, install vents, etc
 - a. Not recommended
 - b. Due to the depth of the basement, maintaining a positive slope would prove challenging.
 - c. Any design should account for normal water levels of the river and the various levels of flooding to assure water does not back up into the house.
 - d. Concern over the depth of the footings for the foundation. The County should verify the footing depths to remediate any frost or other movement/buoyancy issues.
2. Fill the basement to an elevation equal to the exterior grade
 - a. Recommended option
 - b. Would provide the greatest level of protection
 - c. Would be consistent with the original plans approved by the community
 - d. Would not require extensive regrading of the property
 - e. Appears technically feasible
3. Do a combination of the two above to get the interior and exterior grade at the same elevation on at least one side, install vents, etc.
 - a. Not recommended
 - b. Similar issues as option 1

FEMA also indicated that the longer the violation remains open, the greater the risk to the County of losing its eligibility in the Federal Flood Insurance Program.

At this time, the Planning Director notified the property owner that they would need to submit a plan to fill in the basement as recommend by FEMA, otherwise she would forward the case to the BZA to consider enforcement action as any option other than filling in the basement would take considerably more time to obtain potential approval.

November 2023 – The property owner has not submitted a plan to correct the violation.

BZA Decision

Staff requests that the BZA render a decision to ensure timely correction of the violation. Staff recommends issuing a deadline to submit a plan to correct the violation, a deadline for correction of the violation, and automatic fines for failure to meet the deadlines.

From: [Kuklewski, Eric](#)
To: [Jeff Powell](#)
Cc: danny.j.rigdon@gmail.com; [Desiree Calderella](#); [Kerry Daily](#); [Pearson, Darren M.](#); [Wagner, Douglas A](#)
Subject: RE: Rigdon Property, Shelby County IN
Date: Thursday, September 7, 2023 6:36:26 PM
Attachments: [image001.png](#)
[FF-086-0-33 Elevation Certificate and Instructions, 2015 Edition Building Diagrams.pdf](#)

Mr. Powell:

Thank you for your follow up email to our call regarding the floodplain violation identified under LOMR-F case# 22-05-3422A.

The three suggested paths that Ashley outlined are the same three paths that we discussed at length during our call. The issue is over the execution of option 1 which is the issue.

As we discussed, the stepped excavation along the one wall does not resolve the violation since the lower area would still be considered a basement. This is the same as an escape window well does not change the fact a basement is subgrade. It is also similar to garden apartment situations or split-level homes with sunken entry ways/patios. To utilize permanent openings and demonstrate compliance they must be used in an area other than a basement per 44 CFR 60.3(c)(5). To better illustrate this, I have attached the building diagrams from the elevation certificate used for the property. What has been created by the work represented in the photos of the latest elevation certificate and described in our phone conversation is a building type represented in diagram 2B. In other words, regardless of the openings or a door (in the case of the diagram) there remains a basement because the low floor is subgrade (sunken down) on all sides. There is no pitch away from the structure. I also have taken the time to investigate the option of a drain and concluded (after review of the regulations, consultation with counterparts from another Region/HQ and review of other documents) that it will not be a means to alter the classification of the lower area being considered a basement. This is just like escape windows having drains and sunken entry ways having drains which do not alter the classification of the lowest floor. As we discussed on the call, the way to allow for the use of permanent openings to reclassify the lower area would be to regrade the away from the structure so that run-off is free flowing away from the structure to the flooding source. This is what is represented in diagram 7 shown in the elevation certificate and the intent of Ashley's statement in her email. I would note that although diagram 7 is selected on the elevation certificate, the photos and elevation information support that this is in fact a diagram 2B structure in its current condition.

We also discussed the size and location of the openings. Based on your elevation certificate the enclosed area is 2223 square feet which would require at least two permanent openings whose total permanent open space equals 2223 square inches. The openings need to be below the BFE and within 1 foot of the adjacent grade. There is an option that allows alternate designs (like engineered openings) that are "*certified by a registered professional engineer or architect*" per 44 CFR 60.3(c)(5). As it relates to the vents used, I do not see any professional seal of either a registered professional engineer or architect on the technical information that you attached with the email. In addition, the lower enclosed area below the Base Flood Elevation (BFE) must consist of flood resistant materials and all utilities must either be elevated above the BFE or be made watertight.

The lower enclosed area must only be used for parking, limited storage and/or building access. Part of the violation remediation (should the option of the lower enclosed area remaining be moved forward), we would also require the community to record a non-conversion agreement on the structure which would allow for inspections to verify the permanent openings are still functioning as designed and no conversion has occurred to the lower area.

Ashley's second option we had also discussed which appears to be how the original home was approved by the community and should have been constructed. Specifically, to elevate the interior of the enclosed area to or above the BFE. Based on the information from the elevation certificate it appears that there would be sufficient space from the BFE to the bottom of the lowest duct work to achieve compliance with the minimum NFIP standards. This option would provide the greatest protection against flood damages and the most favorable flood insurance rates.

Ashley's third option we also discussed which is some combination of regrading and use of openings.

In short, there are still three options as originally explained by Ashley. With that said, we rely on the property owners design professionals and local community officials to assure that the option selected to mitigate violations to the maximum extent possible is appropriate for the structure/situation, are technically feasible and meet the minimum NFIP development standards.

While option 1 is still an option, it would not be my recommended course of action since other options are available and appear feasible. Specifically with option 1, It is unclear if positive drainage away from the structure could be achieved with such a deep basement. I would be concerned that there is not enough pitch away from the structure even carrying the regrading out into the floodway. This could lead to standing water in the yard or adjacent to the structure. The site plan also shows a proposed pond in the rear yard with a normal water elevation approximately at the same elevation as the basement floor of the structure. This could pose additional challenges in regrading. I would strongly encourage the county and whomever is doing the design work to closely review any new additional proposed regrading to assure that there is positive slope away from the structure. Normal water levels of the river and the various levels of flooding should be looked at to assure that there is not a situation where water is backing up to the house in non-flood conditions or events lesser than the 100-year flood. As I expressed on the call, I am also concerned over the depth of the footings for the foundation. I would strongly recommend that the county verify the footing depths to assure that any issues with frost or other movement/buoyancy issues are addressed now that the wall has been exposed.

Option 2 (filling in the basement to the BFE) would provide the greatest level of protection, be consistent with the original plans approved by the community, not require extensive regrading of the property, and appears to be technically feasible. This is the recommended option based on all the facts as I know them.

Option 3 (some combination of filling and openings) is also viable with perhaps a reduced level of protection to the structure if crawlspace clearance with option 2 is an issue.

Whichever option is selected to move forward, the county needs to review the proposed work (prior

to the work taking place), issue revised permits for the work, inspect the work, and document the work. The county should also consult with the Indiana DNR to assure that any state higher standards have been met with the selected option.

We remain available to work with Shelby County to address their questions and resolve the violation.

I hope this further clarifies the path to resolving the violation to the minimum NFIP development standards and should you have additional questions feel free to reach out.

Regards,

Eric

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