

**Shelby County
Board of Zoning Appeals**

December 10, 2024, at 7:00 PM

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MEETING AGENDA

Shelby County Board of Zoning Appeals December 10, 2024, 7:00 P.M.

CALL TO ORDER

ROLL CALL

APPROVAL OF MINUTES

Minutes from the November 12, 2024, meeting.

OLD BUSINESS

BZA 24-39 – ADAM MILLER / MILLER’S LAWN & LANDSCAPING: FINDINGS OF FACT.

NEW BUSINESS

BZA 24-44 – ROBIN & FRANK DAVIS: USE VARIANCE. Located at 9075 N 800 E, Morristown, Hanover Township.

DISCUSSION

BZA 24-39 – ADAM MILLER / MILLER’S LAWN & LANDSCAPING: Request for extension to bring property into compliance. Located at 4580 W 300 N, Fairland, Brandywine Township.

V24-17 – ANTHONY & EMMA JEAN STEWART: ZONING VIOLATION. Located at 657 N 350 W, Shelbyville, Brandywine Township

BZA 24-23 – NATHAN D STICKFORD / SOS HAULING LLC: Clarification regarding zoning approval. Located at 4842 N Brandywine Rd, Shelbyville, Brandywine Township.

APPROVAL OF 2025 BZA MEETING CALENDAR

ADJOURNMENT

The next regular meeting of the Shelby County Board of Zoning Appeals is scheduled for Tuesday, **January 14, 2025, at 7:00 PM.**

Special Exception FINDINGS OF FACT

Applicant: Adam Miller / Miller's Lawn & Landscaping

Case #: BZA 24-39

Location: 4580 W 300 N, Fairland, Brandywine Township

1. The proposed special exception is not consistent with the purpose of the zoning district and the Shelby County Comprehensive Plan.

The Comprehensive Plan recommends suburban residential development for the area and the UDO states that in the RE District: Allow a special exception use only when it is compatible with the surrounding residential areas. The business imposes nuisance impacts to the neighborhood including disruption by business activity occurring early in the morning and late in the evening, traffic, noise from back-up beepers and movement of trucks, and odor and health impacts from the burning of materials.

2. The proposed special exception will be injurious to the public health, safety, morals and general welfare of the community.

Business operations include burning of materials which impacts air quality.

3. The proposed special exception is not in harmony with all adjacent land uses.

The business has multiple components rendering it more consistent with a commercial operation than a home business. Therefore, the business disrupts the character of the area and is not consistent with the peaceful, relaxing, open country setting of the area.

4. The proposed special exception will alter the character of the district.

The business has multiple components rendering it more consistent with a commercial operation than a home business. Therefore, the business disrupts the character of the area and is not consistent with the peaceful, relaxing, open country setting of the area.

5. The proposed special exception will substantially impact property value in an adverse manner.

If a prospective buyer were to consider two identical properties - one next to this type of business and one without - it is likely that the proximity to such a business could have a negative effect on the property's perceived value. This impact could reduce the pool of interested buyers, extend the time on market, and potentially lead to a decrease in the final sale price.

Property Details

Location: 9075 N 800 E, Morristown, Hanover Township.

Property Size: 6-acres.

Current Land Use: Vacant.

Zoning Classification:

A2 (Agricultural)

Intent: This district is established for general agricultural areas and buildings associated with agricultural production.

BZA: Protect the integrity of land and operations within the Agricultural District

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.

	Zoning	Land Use
North	A2	Railroad
South	A1	Cropland
East	A3	Estate Residential (Rush County)
West	A1	Cropland

Staff Report

Case Number: BZA 24-44

Case Name: Robin & Frank Davis – Use Variance

Request

Variance of Use to allow for temporary occupancy of a recreational vehicle (RV) and associated storage of residential items prior to construction of a new single-family dwelling.

Code Requirement

UDO Section 2.06 A2 District Intent, Permitted Uses, and Special Exception Uses

Purpose of Requirement – Prohibition of RVs for occupancy in the A2 District protects the character of rural areas and surrounding property values.

Property Map



Case Description

- The petitioners plan to place an RV on the property to use as their dwelling while they construct a new single-family residence. They also plan to store their personal items on the property.
- The petitioners intend to install a septic system and electric facilities to service the RV prior to occupying the RV.
- The Shelby County Health Department has reviewed a preliminary septic and drainage plan and indicated that the plan will likely comply with Health Department requirements.
- On November 26, 2024, the Plan Commission recommended approval of a rezoning of the property from A1 (Conservation Agricultural) to A2 to allow for residential development of the property. The County Commissioners approved this rezoning on December 9, 2024.
- Previous use of the property included an automobile junkyard; however, the property has remained vacant for several years.
- The petitioner recently purchased the property from Barry Grant. Mr. Grant obtained a use variance from the BZA in February of 2024 to allow for development of an outdoor living, garden, and farm supplies retail establishment on the property. Use variances expire at the time of sale of a property.

Staff Analysis of Findings of Fact

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

Staff Analysis: Temporary occupancy of an RV utilizing an approved septic system for waste disposal would not pose an environmental or safety impact to the community.

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: Temporary occupancy of an RV utilizing an approved septic system for waste disposal would not pose an environmental impact, and therefore would not impact continued use of adjacent property for crop production.

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 temporary occupancy of an RV in an area relatively isolated from residential development and which would not impact continued use of adjacent property for crop production.

Staff Recommendation

APPROVAL because a strict application of the ordinance would not allow for temporary occupancy of an RV in an area relatively isolated from residential development and which would not impact continued use of adjacent property for crop production.

Recommended Stipulation:

1. A single-family residence shall be constructed on the property and receive a certificate of occupancy by December 9, 2025 (one year from the date of approval).

Applicant/Owner Information

Applicant:	Frank & Robin Davis	Owner:	Same
	342 W North St.		
	Morristown, IN 46161		

**DEVELOPMENT STANDARDS VARIANCE
FINDINGS OF FACT**

Applicant: Robin & Frank Davis
Case #: _____
Location: 9075 N 800 E Morristown TN 37816

The Shelby County Board of Zoning Appeals must determine that the following criteria have been met in order to approve an application for a Development Standards Variance. Using the lines provided, please explain how your request meets each of these criteria.

1. **General Welfare:** The approval will not be injurious to the public health, safety, and general welfare of the community.

we will obtain all permits and all services needed such as water/septic & electric before we are able to move and live in camper therefore safety of all concerns will be met as if we a house

2. **Adjacent Property:** The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner.

we will take pride in all conditions involved we will continue to work on property and making it look appealing and invest in our purchase of land for our future forever home

3. **Practical Difficulty:** The strict application of the terms of the Shelby County Zoning Ordinance will result in a practical difficulty in the use of the property.

in communicating on a preliminary bases we do not see any reason that after needed services obtained for building of home, that our living living on property in camper until home is built would cause any problem for nearby property

The Board of Zoning Appeals may review the applicant's findings of fact to assist with their decision-making process. Please see below for general guidance related to completing the findings of fact:

General Welfare: How does the request do no harm to the overall community of Shelby County? (ex. pollution, customer safety, road network safety, building code compliance, etc.)

Adjacent Property: How does the request do no harm to adjoining property and neighborhood? (ex. noise, odor, traffic generation, distance from property lines, appearance of property, etc.)

Practical Difficulty: This situation shall not be self-imposed, nor be based on a perceived reduction of, or restriction on, economic gain (ex. of practical difficulty: topography of property, location of septic system, consistency with nearby land uses, historical use of property, etc.)

Shelby County Plan Commission

Memo

To: Shelby County Board of Zoning Appeals

From: Desiree Calderella, Planning Director

BZA 24-39 – ADAM MILLER / MILLER’S LAWN & LANDSCAPING: Request for extension to bring property into compliance. Located at 4580 W 300 N, Fairland, Brandywine Township.

At their November 12, 2024, meeting the Board denied Special Exception Case 24-39 Adam Miller / Miller’s Lawn & Landscaping. The Board granted the petitioner 30 days (until December 12, 2024) to bring the property into compliance.

Staff notified the petitioner of the deadline the day after the meeting. The petitioner requested an extension until the Spring of 2025 due to the inability to find an available property for relocation of the business. Staff informed the petitioner that he would need to request the extension from the Board.

Staff notified the neighborhoods who had spoken in opposition to the petition of the request for extension. The neighbors expressed concern regarding the extension request.

BZA Decision

Staff requests that the BZA hear testimony from the petitioner and any concerned neighbors and render a decision regarding a timeline to bring the property into compliance.

Zoning Violation

Case Number: V24-17
Property Owner: Anthony & Emma Jean Stewart
Location: 657 N 350 W, Shelbyville, Brandywine Township

Potential Violation

Construction of a fence with the structural face facing outward.

Section 5.23 C 1 - Presentation: Fences and walls shall present the non-structural face outward, except when used for containment of pastured animals.

Case History

Prior to November 12, 2024, BZA Meeting

- Staff received a complaint regarding the construction of a fence with the structural face facing outward.
- Staff sent the property owner a violation letter and the property owner promptly contacted the Planning Department.
- The property owner explained that they had added an extension to an existing fence which has its structural face facing outward. Staff explained that the existing fence qualifies as a legal-nonconforming 'grandfathered' structure due to construction of the fence prior to the current UDO, however, the petitioner would need to remove the new portion of the fence or request a variance from the BZA.
- The property owner chose to add paneling to the structural side of the fence as a method to convert the fence into a shadow box design which does not have a structural face. The property owner explained that removal and reconstruction of the fence would pose an economic hardship. The property owner did not inform Staff of their plan to alter the fence until after they had installed the paneling.
- The property owner maintains that conversion of the fence into a shadow box design corrects the violation. The complainant maintains that the fence has a structural face facing outwards with fence paneling attached, which does not correct the violation.

After November 12, 2024, BZA Meeting

- At their November 12, 2024, meeting, the BZA determined that placement of boards on the structural side of the fence at irregular intervals did not create a shadowbox design and therefore did not resolve the violation. The Board voted to impose a \$500 fine in the event of failure to install a solid face on the side of the fence facing the neighbor's residence by December 1, 2024.
- On November 21, 2024, the property owner submitted photographs to the Plan Commission office showing paneling installed creating a solid face on the side of the fence facing the neighbor's residence. However, the existing structural posts extended past the solid face at regular intervals.

- On November 20, 2024, the neighbor filed a complaint with the Plan Commission office that the fence does not comply with the conditions imposed by the Board because the structural posts extend past the solid face of the fence.
- The Planning Director informed the neighbor that she would tend to consider the fence compliant with the decision rendered by the Board because the posts extend past the fence at regular intervals similar to a design feature. However, she offered to bring case before the Board for reconsideration. The neighbor asked that the Board review the case.

BZA Decision

Staff requests that the BZA review the evidence and determine if the current alteration to the fence corrects the zoning violation. If the Board determines that the fence alteration does not correct the violation, Staff requests that the Board provide direction to Staff regarding enforcement action.







Group A



Group A



Group A

Desiree,

I am attaching a file for the BZA Meeting. The pictures are grouped in to 3 sections A, B, C. Group A is showing all the posts and how they are installed on the back side of the fence. Group B is the old fence and the new fence and Group c is the fence on the easement side.

Please let me know if you have any questions or need further information. I appreciate all your help with this matter.

Thank you
Devin Kanouse

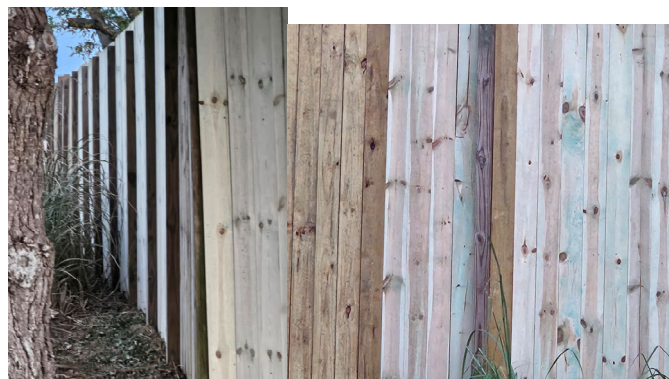
Group A



Group A



Group A



Group A



Old Fence

New Fence



Old Fence

New Fence

Group B

Group B



Shelby County Plan Commission

Memo

To: Shelby County Board of Zoning Appeals

From: Desiree Calderella, Planning Director

BZA 24-23 – NATHAN D STICKFORD / SOS HAULING LLC: Clarification regarding zoning approval. Located at 4842 N Brandywine Rd, Shelbyville, Brandywine Township.

Property & Case History

- 2017 – The previous property owner obtained building, electric, and floodplain permits for a 3,150 sq. pole barn. The permit application listed use of the barn as storage, parking, workshop.
- 2019 – The Indiana Department of Natural Resources rendered the building in violation due to lack of an Elevation Certificate verifying elevation of the structure two feet above the base flood elevation and compliance with floodplain development requirements.
- 2020 – The previous property owner hired a surveyor to complete an Elevation Certificate. The certificate designated a loft area as the first floor which allows the ground floor to sit below the base flood elevation. However, the certificate also indicated that the structure included a hot water heater and a bathroom below the base flood elevation. Floodplain development standards do not allow utilities or partitioned areas below the base flood elevation. Additionally, the property owner did not obtain a plumbing or septic permit from the County. Therefore, the County rendered the structure in violation with Zoning, Floodplain, Health Department, and Building codes.
- 2022 – The BZA denied an application for special exception submitted by the previous property owner to allow for a Type 3 Home Business (automobile repair).

25 W Polk St, Shelbyville, IN 46176
T: 317-392-6338 W: <https://www.co.shelby.in.us/plan-commission/>

- June of 2024 – The BZA approved an application for variance submitted by the current property owner.
 - The specific variance requests included the following:
 - Variance of Use to allow for a construction and hauling business in the RE (Residential Estate) District.
 - Variances of Development Standards to allow:
 - Outdoor storage of equipment, machinery, and aggregate (only permitted in the I2 (High Intensity Industrial) and HI (High Impact) Districts);
 - Use of a dumpster (not permitted in single-family residential districts);
 - A commercial sign.
 - Stipulations of approval included the following:
 - The use shall be limited to the Statement of Intent submitted with the variance application and site development shall be limited to the Site Plan submitted with the variance application.
 - The property shall comply with all Screening of Industrial Outdoor Storage and Landscaping Standards applicable to the I2 (High Intensity Industrial) District prior to use of the property for a trucking and hauling business. Specifically:
 - When adjacent to a public street, outdoor storage of vehicles, equipment, product, supplies, materials, waste or scrap, pallets, and the like shall be effectively screened on all sides with a minimum six (6) foot privacy or security fence, at least ten (10) feet from the property line. The ten (10) foot area immediately outside the fence shall be landscaped with trees (one per fifty (50) lineal feet of fence) and shrubs (one per thirty (30) lineal feet of fence).
 - Required landscaping along Brandywine Rd. and Michigan Rd. shall be placed on top of a 2-foot tall berm.
 - Outdoor storage areas shall be elevated 1-foot above existing grade.
 - Ingress and egress shall only be permitted from Michigan Rd.

- November of 2024 – The property owner submitted a Site Plan for Technical Review. The County requires approval of a Site Plan prior to land grading and site development over one acre. The Plan Commission office does not approve Site Plans for properties which include land or structures out of compliance with zoning and building codes. Staff informed the property owner that he would need to bring the building into compliance prior to approval of the Site Plan.
- December of 2024 – The property owner stated that the Board had approved use of the building in its current condition as part of the June 2024 variance approval.

BZA Decision

Staff requests that the BZA review the property history and previous approvals and determine if the property owner must correct the issues with the building. If the Board determines that the property owner must correct the issues with the building, the property owner has the following options:

- Remove bathroom and elevate all utilities above the base flood elevation. Submit an Elevation Certificate verifying compliance.
- Obtain a Floodplain Development Standards variance from the BZA.

Shelby County BZA

<u>BZA Scheduled Meetings</u>	<u>BZA Application Deadline</u>	<u>BZA Legal Notice Deadline</u>
January 14, 2025	December 23, 2024	January 2, 2025
February 11, 2025	January 21, 2025	January 30, 2025
March 11, 2025	February 18, 2025	February 27, 2025
April 8, 2025	March 18, 2025	March 27, 2025
May 13, 2025	April 22, 2025	May 1, 2025
June 10, 2025	May 20, 2025	May 29, 2025
July 8, 2025	June 17, 2025	June 26, 2025
August 12, 2025	July 22, 2025	July 31, 2025
September 9, 2025	August 19, 2025	August 28, 2025
October 14, 2025	September 23, 2025	October 2, 2025
*November 4, 2025	October 14, 2025	October 23, 2025
December 9, 2025	November 18, 2025	November 27, 2025

*Frist Tuesday