

**Shelby County
Board of Zoning Appeals**

February 13, 2024, at 7:00 PM

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MEETING AGENDA

Shelby County Board of Zoning Appeals February 13, 2024, 7:00 P.M.

CALL TO ORDER

ROLL CALL

ELECTION OF OFFICERS

APPROVAL OF MINUTES

Minutes from the December 12, 2023, meeting.

OLD BUSINESS

None.

NEW BUSINESS

BZA 24-04 – BARRY GRANT: USE VARIANCE & DEVELOPMENT STANDARDS VARIANCE. Located at 9075 N 800 E, Morristown, Hanover Township.

BZA 24-05 – BRENDAN RIGGS: USE VARIANCE. Located at 7900 N 250 E, Shelbyville, Hanover Township.

DISCUSSION

APPROVED HEARING OFFICER CASES

BZA 24-01 – MT PISGAH BAPTIST CHURCH: DEVELOPMENT STANDARDS VARIANCE. Located at 3718 E Blue Ridge Rd, Shelbyville, Addison Township. *Approved January 2, 2024.*

BZA 24-02 – TAMARA J COOMER: DEVELOPMENT STANDARDS VARIANCES. Located south of and adjoining 4767 N 100 W, Shelbyville, Brandywine Township. *Approved January 25, 2024.*

BZA 24-03 – BENJAMIN MOHR: DEVELOPMENT STANDARDS VARIANCES. Located at 1899 W Washington Ave, Shelbyville, Addison Township. *Approved January 25, 2024.*

ADJOURNMENT

The next regular meeting of the Shelby County Board of Zoning Appeals is scheduled for Tuesday, **March 12, 2024 at 7:00 PM.**

Property Details

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

Property Size: 6-acres.

Current Land Use: Vacant.

Zoning Classification:

A1 (Conservation Agricultural)

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

Application: Prime agricultural land that should be protected from development.

Development Standards: Enact development standards to maximize protection of common agricultural practices.

BZA: Protect the integrity of land and operations within the Conservation 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.

Surrounding Development

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

Staff Report

Case Number: BZA 23-04

Case Name: Barry Grant – Use & Development Standards Variances

Request

Variance of Use to allow for an outdoor living, garden, and farm supplies retail establishment, including outdoor storage of product, in the A1 (Conservation Agricultural) District.

Variance of Development Standards to allow for a commercial ground sign in the A1 District.

Code Requirement

UDO Section 2.04 – A1 District Intent, Permitted Uses, and Special Exception Uses.

UDO Section 5.73 – General Sign Standards

Property Map



Case Description

- The petitioner intends to operate a country store from the property, which would include seasonal sales of outdoor living, garden, and farm supplies, including outdoor storage of product. He currently operates this business from a property in Van Wert, OH.
- Proposed development includes a 16'x32' portable office building, 30'x60' pole building for storage, septic system, five-space gravel parking area, and gravel driveway with access to CR 800 E.
- Summary of the petitioner's Statement of Intent:
 - Hours of Operation: Spring and Summer, 10AM – 5PM Monday through Friday, and 9AM – 3PM Saturdays.
 - Maximum Number of Customers: Fifteen (15) per day.
 - Deliveries: Pick-up truck with flat bed and 20' box trailer, two to four times per month.
 - Outdoor Storage: Only products for sale.
- Previous use of the property included an automobile junkyard, however, the property has remained vacant for several years.
- Development of the site would require Technical Advisory Committee review and approval of a Site Plan in compliance with applicable County codes. The Site Plan must include elevations, specific building and parking locations, proposed septic design, and drainage infrastructure. The petitioner has obtained soil samples to determine septic feasibility.
- The UDO would classify the proposed use as a Type 1 Retail Use, permitted in the VM (Village Mixed Use) District and C1 (Neighborhood Commercial District). However, the ordinance only recommends rezoning of properties to these districts when adjacent to cities and towns with population to support the business. Given the isolated location of the property and temporary nature of the development, Staff recommended that the petitioner apply for a use variance.
- Unlike a rezoning, use variances only permit the specific use requested and do not transfer with the property if sold to an entity other than the petitioner.
- Staff Recommended Stipulations: The proposed use incorporates elements of a commercial use, an agricultural commercial use, and a temporary use which necessitates unique considerations regarding approval.
 - The stipulations recommended by Staff regarding the display of merchandise ensures orderly display of merchandise and ensures that storage of merchandise does not impact use of parking areas, driveways, or roads. Other zoning codes in the Indianapolis region with outdoor merchandise storage standards include similar language.
 - Staff has also recommended stipulations regarding building design, lighting, and dumpster storage to protect the aesthetic quality of the US 52 corridor. The UDO requires that new developments located in low intensity commercial zoning districts comply with these standards.

- Staff does not recommend paving of the parking area or landscape buffers required in low intensity commercial districts to allow the property to remain consistent with the rural character of the area. However, Staff does recommend a paved driveway apron to limit migration of dust onto the public road and a paved handicap parking space in compliance with ADA standards.

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: Development of the site would require Technical Advisory Committee review and approval of a Site Plan in compliance with applicable County codes. Orderly display of merchandise and compliance with standards applicable to low intensity commercial development identified in the UDO would protect the aesthetic quality of the US 52 corridor and promote safe and efficient movement of vehicles into and within the site. The proposed use would provide a retail service currently not available in the area to the traveling public on US 52 and the surrounding 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: The proposed use would not impact continued use of adjacent property for agricultural production. Sale of outdoor living, garden, and farm supplies is consistent with the rural character of the area.

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

Staff Analysis: Environmental considerations related to previous use of the property as an automobile junkyard render the property undesirable for agricultural use or residential development.

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 not allow for small-scale commercial development of property undesirable for agricultural use or residential development, or for small-scale commercial development of property with direct access to the US 52 corridor.

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

Staff Analysis: Development of the property would not remove cropland from production or prevent continued use of adjacent properties for agricultural purposes.

Development Standards 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 signs would require sign permits and must comply with all sign placement and lighting requirements identified in the UDO.

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 signs would require sign permits and must comply with all sign placement and lighting requirements identified in the UDO.

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 adequate business identification.

Staff Recommendation

Staff recommends **APPROVAL** primarily because the sale of outdoor living, garden, and farm supplies is consistent with the rural character of the area. Orderly display of merchandise and compliance with standards applicable to low intensity commercial development identified in the UDO would protect the aesthetic quality of the US 52 corridor and promote safe and efficient movement of vehicles into and within the site. The proposed use would provide a retail service currently not available in the area to the traveling public on US 52 and the surrounding community.

Staff recommends **stipulations:**

1. The size and location of buildings and parking areas shall be consistent with the Site Plan submitted with the variance application.
2. Outdoor display of merchandise shall not be located in any required building setback, right-of-way, or off-street parking or loading areas and shall be displayed in rows.
3. The materials and color of all structures shall match, closely resemble, or significantly complement one another.
4. The driveway shall be at least 14-feet wide and include an asphalt or concrete driveway apron at least 25-feet in length measured from the center of CR 800 E.
5. All outdoor site lighting shall include full cut-off fixtures and the maximum allowable light at a property line shall be five (5) lux.
6. Any dumpsters stored outdoors shall be on a paved surface and screened by a wall or fence.
7. At least one paved parking space in compliance with Section 5.60 F Parking for the Disabled shall be provided.
8. The parking lot shall include area for at least seven (7) vehicles and shall not encroach more than 50% into the minimum required front setback.

Applicant/Owner Information

Applicant:	Barry Grant 7838 N 250 E Shelbyville, IN 46176	Owner:	Johnson, K.L. & J.N. 2171 E Bo Mar Ln Greenfeld, IN 46140
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Petitioner's Business in Van Wert, OH



Petitioner Photograph



Google Street View – July, 2023

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: Outdoor sales lot consisting of outdoor furniture, portable buildings, playsets, backyard supplies, farm products and supplies. A country store, out in the country. Seasonal buisness.

2. Days & Hours of Operation: Spring & Summer Monday-Friday 10-5 Saturday 9-3

3. Maximum Number of Customers per Day/Week/Month: 15/90/400

4. Type and Frequency of Deliveries: Pick-up truck with flat bed and 20' box trailer. 2-4 times/month.

5. Description of any Outdoor Storage: There would be no outdoor storage.

6. Description, Size, and Placement of any Signage: One sign approx 3'x5' on US 52.

7. Description of Waste Disposal: Very Minimal Waste, I would have a WM container.

8. Existing and/or Proposed Building and Site Improvements Pertaining to Proposed Use (ex. parking lot, landscaping, commercial upgrades to building, etc.): I would have a portable office, 16'x32' And a pole building built for storage approximately 30'x60'

DEVELOPMENT STANDARDS VARIANCE
FINDINGS OF FACT

Applicant: Barry Grant

Case #: _____

Location: 9075 N 800 E Morristown, IN 46161

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. This business would be a blessing to the community. A quiet addition to the country.

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.

Correct, we are farmers that support farmers. This property currently is an eye sore, a dumping site, cleaning it up could add value to adjacent properties.

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.

We gladly will comply with all terms and ordinances involving the property.

USE VARIANCE
FINDINGS OF FACT

Applicant: Barry Grant

Case #: _____

Location: 9075 N 800 E Morristown, IN 46161

The Shelby County Board of Zoning Appeals must determine that the following criteria have been met in order to approve an application for a Use 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. This buisness would be a blessing to the community, a quite place in the country.
_____ comply with all building codes.

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 are farmers that support farmers and farm land. The land is currently an eye sore, it is vacant
_____ land that has been used by road crews for dumping. Cleaning it up would be positive for adjacent
_____ properties.

3. **Practical Difficulty:** The need for the variance arises from some condition particular to the property involved.
We gladly will comply with all terms and ordinances for this property.

4. **Unnecessary Hardship:** The strict application of the terms of the Shelby County Unified Development Ordinance will constitute an unnecessary hardship as they are applied to the property for which the variance is sought.

5. **Comprehensive Plan:** The granting of the variance does not interfere substantially with the Comprehensive Plan. The proposed use would not interfere with future residential use. Or the property could be farmed
_____ in the future as well.

RAILROAD

9075 N 800 E
MORRISTOWN IN.
46161

700'

SEPTIC

GRAVEL

POWER LINE

POLE
BUILDING
PORCH

PARKING

OFFICE

EXISTING WELL

DRAINAGE ↓

330'

DITCH

N 800 E

○ - COUNTY DRAIN

US 52

Property Details

Location: 7900 N 250 E,
 Shelbyville, Hanover Township.

Property Size: 10.65-acres.

Current Land Use: Cropland.

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

Parks, Open Space, & Conservation

The purpose of this category is to provide for passive and active recreational activities, permanent preservation of significant natural areas, and preservation of natural features within clustered developments. This category applies to public and private lands.

	Zoning	Land Use
North	A1/A2	Cropland / Estate Residential
South	A1/A2	Cropland / Estate Residential
East	A1	Cropland
West	A1	Cropland

Staff Report

Case Number: BZA 24-05

Case Name: Brendan Riggs – Use Variance

Request

Variance of Use to allow for private recreational use as the primary use of property in the A2 (Agricultural) District.

Code Requirement

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

The UDO does not list recreational use as a permitted use of property in the A2 District. However, the UDO does list single-family residence as a permitted use in the A2 District, therefore recreational use associated with a single-family residence would be permitted in the A2 District.

Purpose of Requirement: Prohibiting private recreational use in the A2 District without the presence of a single-family residence discourages use of property for recreational activities that would generally pose a nuisance to a home located on the lot, and therefore to any neighboring rural residential lots. For example, hunting within a wooded area adjacent to a rural neighborhood may pose noise and safety impacts to residential homesites.

Property Map



Case Description

- The petitioner intends use the property for private hunting and shooting. He also intends to continue to use the property for agricultural purposes.
- The petitioner intends to install a safety backstop for firearm discharge along the east property line.
- Most of the property lies within Federal Emergency Management Agency (FEMA) Special Flood Hazard Area Zone A and Indiana Department of Natural Resources (IDNR) designated Floodway and Flood Fringe. The petitioner proposes to construct the safety backstop in the Floodway.
 - The State requires a Certificate of Approval for any development in the Floodway. The petitioner must obtain this certification prior to applying for a County Floodplain Development Permit.
 - The County requires a Floodplain Development Permit for any development in a designated flood hazard area, however, has no additional requirements for non-structural improvements other than any requirements imposed by the State. The petitioner must obtain this permit prior to construction of the safety backstop.
- Four residential properties adjoin the west side of the subject property, including one recently constructed not shown on the property map.
- Shelby County has not adopted any additional ordinances prohibiting hunting or the shooting of firearms on private property. When the County receives a complaint regarding shooting, the Sheriff's Department will typically conduct a site inspection to verify that the property owner and guests shoot in a safe manner.
- Use variances expire at the time the property changes ownership. Therefore, the future owner of the property would need to obtain a new variance to use the property for recreational purposes.

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: Shooting and hunting on the property in a safe manner as determined by the Shelby County Sheriff's Department would not be injurious to the public health, safety, morals, and general welfare of the community. Private recreational use of the property would not generate additional traffic or result in a significant change to the aesthetic appearance of the property.

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: Hunting and shooting on a regular basis by persons not living on the property of could result in gunfire noise in excess than typically generated in rural areas which could impact the use and enjoyment of residential properties adjacent to west side of the subject property. Shooting and hunting should only be permitted on the east side of the property.

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

Staff Analysis: Most of the property lies within a designated floodplain which limits use of the property for any purpose other than recreation or open space.

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: Most of the property lies within a designated floodplain which limits use of the property for any purpose other than recreation or open space.

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

Staff Analysis: The Comprehensive Plan designates recreational use as an acceptable land use in the Parks, Open Space, and Conservation land use category.

Staff Recommendation

APPROVAL primarily because the east portion of the property is relatively isolated from residential development. Staff recommends a **stipulation**:

1. Hunting and shooting shall not be permitted closer than 300-feet to any existing adjacent residential property.

Applicant/Owner Information

Applicant:	Brendan Riggs 4090 South Village Row New Palestine, IN 46163	Owner:	Ted Hauk PO Box 31 Gwynneville, IN 46144
Attorney:	Gary Bolenbaugh 14074 Trade Center Dr #121 Fishers, IN 46038		

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: _____

2. Days & Hours of Operation: _____

3. Maximum Number of Customers per Day/Week/Month: _____

4. Type and Frequency of Deliveries: _____

5. Description of any Outdoor Storage: _____

6. Description, Size, and Placement of any Signage: _____

7. Description of Waste Disposal: _____

8. Existing and/or Proposed Building and Site Improvements Pertaining to Proposed Use (ex. parking lot, landscaping, commercial upgrades to building, etc.): _____

**USE VARIANCE
FINDINGS OF FACT**

Applicant: _____

Case #: _____

Location: _____

The Shelby County Board of Zoning Appeals must determine that the following criteria have been met in order to approve an application for a Use 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.

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.

3. **Practical Difficulty:** The need for the variance arises from some condition particular to the property involved.

4. **Unnecessary Hardship:** The strict application of the terms of the Shelby County Unified Development Ordinance will constitute an unnecessary hardship as they are applied to the property for which the variance is sought.

5. **Comprehensive Plan:** The granting of the variance does not interfere substantially with the Comprehensive Plan.

