

**Shelby County  
Board of Zoning Appeals**

**March 14, 2023 at 7:00 PM**

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# MEETING AGENDA

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

### CALL TO ORDER

### ROLL CALL

### APPROVAL OF MINUTES

Approval of February 14, 2023 minutes continued to the next meeting of the BZA.

### OLD BUSINESS

None.

### NEW BUSINESS

**BZA 23-09 – KAYLA LLOYD:** DEVELOPMENT STANDARDS VARIANCE. Located at 10156 N 400 W, Fountaintown, Moral Township.

**BZA 23-10 – F AND A MARTIN HOLDINGS LLC:** DEVELOPMENT STANDARDS VARIANCES. Located at 506 W Carey St, Fairland, Brandywine Township.

**BZA 23-05 – CHAD BEAVER:** DEVELOPMENT STANDARDS VARIANCES. Located at 5021 N Frontage Rd, Fairland, Brandywine Township.

**BZA 23-11 – ROBERTO CHAVEZ:** USE VARIANCE. Located north of and adjoining 4500 N Michigan Rd, Shelbyville, Brandywine Township.

**BZA 23-07 – MICHAEL JAMES:** SPECIAL EXCEPTION & DEVELOPMENT STANDARDS VARIANCES. Located at 4136 S Marietta Rd, Shelbyville, Hendricks Township.

**BZA 23-08 – MICHAEL JAMES:** USE VARIANCE. Located at 5073 W SR 44, Shelbyville, Hendricks Township.

### DISCUSSION

None.

### ADJOURNMENT

The next regular meeting of the Shelby County Board of Zoning Appeals is scheduled for Tuesday, **April 11, 2023 at 7:00 PM.**

## Property Details

**Location:** 10156 N 400 W,  
Fountaintown, Moral Township.

**Property Size:** 1-acre.

**Current Land Use:** Single-Family Residential.

### Zoning Classification:

R1 (Single-Family Residential)

*Intent:* This district is established for single-family detached, medium to large sized homes on medium to large sized lots.

*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	Cropland
East	A1	Cropland
West	A1	Cropland

# Staff Report

**Case Number:** BZA 23-09  
**Case Name:** Kayla Lloyd – Development Standards Variance

## Request

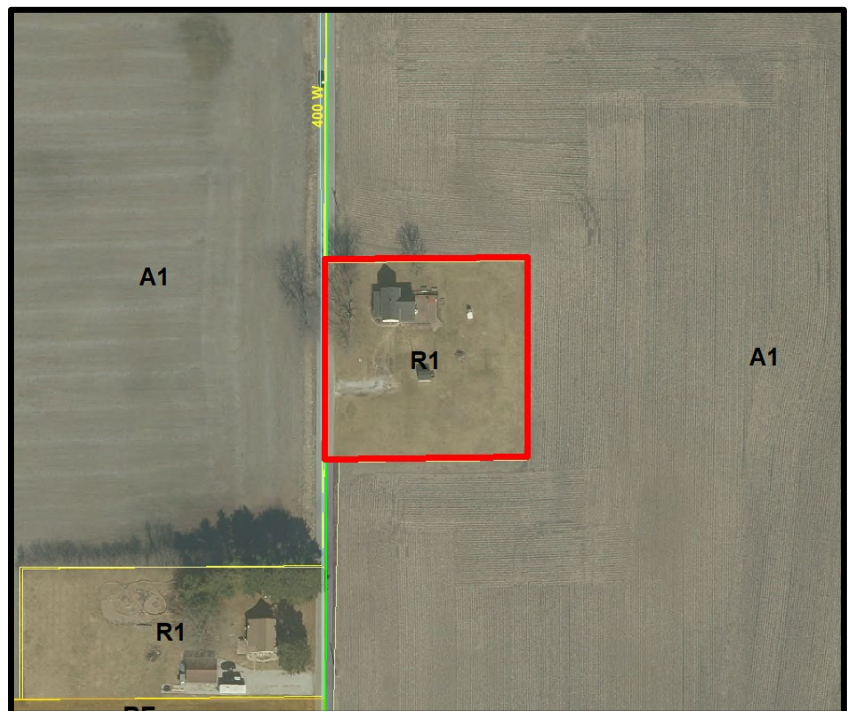
**Variance of Development Standards** to allow for a Type 1 Home Business (dog grooming) conducted within an accessory structure.

## Code Requirement

**UDO Section 5.33 D 1 a:** *The Type 1 Home Business shall be conducted entirely within the primary structure.*

**Purpose of Requirement:** Prohibiting operation of a home business outside of the primary structure discourages home-based business at an intensity that would disrupt use of the primary structure as a dwelling unit. A business that does not disrupt use of the residence on the property would also likely not disrupt the use of neighboring properties for residential purposes. Limiting a home-based business to inside a primary structure also prevents alteration of an accessory structure to accommodate the business, thereby protecting the rural residential character of the neighborhood.

## Property Map



## Case Description

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- The petitioner plans to operate a dog grooming business from a proposed 12' x 32' (384 sq. ft.) accessory structure.
- The petitioner indicated that the business would comply with all other UDO development standards applicable to Type 1 Home Based Businesses permitted in the R1 District.
- The proposed structure would also comply with all UDO development standards applicable to accessory structures.

## Staff Analysis of Findings of Fact

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

Staff Analysis: The business would comply with all other UDO development standards applicable to Type 1 Home Based Businesses permitted in the R1 District.

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 relatively small size of the accessory structure would not allow for operation of a business at a scale that would pose a nuisance to nearby properties or alter the character of the 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 operation of a small-scale, animal-based home-based business. Businesses related to animals typically operate outside of residential structures.

## Staff Recommendation

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Staff recommends **APPROVAL** primarily because the relatively small size of the accessory structure would not allow for operation of a business at a scale that would pose a nuisance to nearby properties or alter the character of the property.

### *Applicant/Owner Information*

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Applicant:	Kayla Lloyd 10156 N 400 W Fountaintown, IN 46130	Owner:	Kayla Lloyd & Ronald M Brown, Jr
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# Home Business Standards (HB)

## 5.33 HB-01: Type 1 Home Business Standards

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



The intent of the Type 1 Home Business Standards is to ensure the protection of the health, safety, and welfare of the residents in the County by allowing and regulating home-based businesses that have minimal impact on the residential character of the rural county or neighborhoods. The following standards apply:

- A. Permits: A permit for a Type 1 Home Business is not required.
- B. Personnel:
  - 1. Residency: The operator of the Type 1 Home Business shall reside in the house.
  - 2. Employees: Only family members of the operator living in the house shall be employed by the Type 1 Home Business.
- C. Operations:
  - 1. Nuisance: The Type 1 Home Business shall not generate offensive noise, vibration, smoke, odors, dust, heat, glare, or electrical disturbances.
  - 2. Traffic: The Type 1 Home Business shall not generate vehicular traffic in greater volumes than would normally be expected in the rural area or neighborhood in which it is located.
  - 3. Large Vehicles: The Type 1 Home Business shall not necessitate or utilize large vehicles that will regularly or periodically be parked on the driveway or on the street, including a box truck, construction trucks, construction equipment, oversized pick-up truck, dually pick-up truck, full-sized van, delivery truck, bus, semi-tractor trailer, and the like.
  - 4. Branded Vehicles: The Type 1 Home Business shall not necessitate or utilize branded vehicles that will regularly or periodically be parked on the driveway or on the street, including passenger vehicles, vans, motorcycles, or the like that have super-graphics or branding colors or designs that advertise or draw attention to the Type 1 Home Business.
  - 5. Customers: The Type 1 Home Business shall not have patrons or customers visit the home.
  - 6. Hours: The hours of operation of the Type 1 Home Business shall not interfere with the use and enjoyment of adjacent rural or residential properties.
- D. Design:
  - 1. Primary Structure:
    - a. The Type 1 Home Business shall be conducted entirely within the primary structure.
    - b. The Type 1 Home Business shall not exceed fifteen percent (15%) of the square footage of the structure.
    - c. There shall be no visible evidence of the Type 1 Home Business, including but not limited to alterations to the exterior of the residence which change the character of the residence, exterior displays, or the outdoor storage of materials or equipment used in the home business.
  - 2. Accessory Structure: No accessory structure shall be utilized for any part of the Type 1 Home Business.
  - 3. Parking and Loading:
    - a. No off-street parking or loading facilities, other than facilities meeting the requirements of the applicable zoning district, shall be permitted.
    - b. No part of a minimum required yard shall be used for off-street parking or loading purposes.
  - 4. Mechanical Equipment: The Type 1 Home Business shall not require the installation of mechanical equipment other than that which is common in a residential structure.
  - 5. Utility Service: The Type 1 Home Business shall not require the installation of a sewer, water, or electrical utility service that is beyond what is common in a residential structure. Exceeding typical phone, cable or internet services for residential property is permitted.
  - 6. Signs: Signs are prohibited.

**DEVELOPMENT STANDARDS 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 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.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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.

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\_\_\_\_\_  
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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.

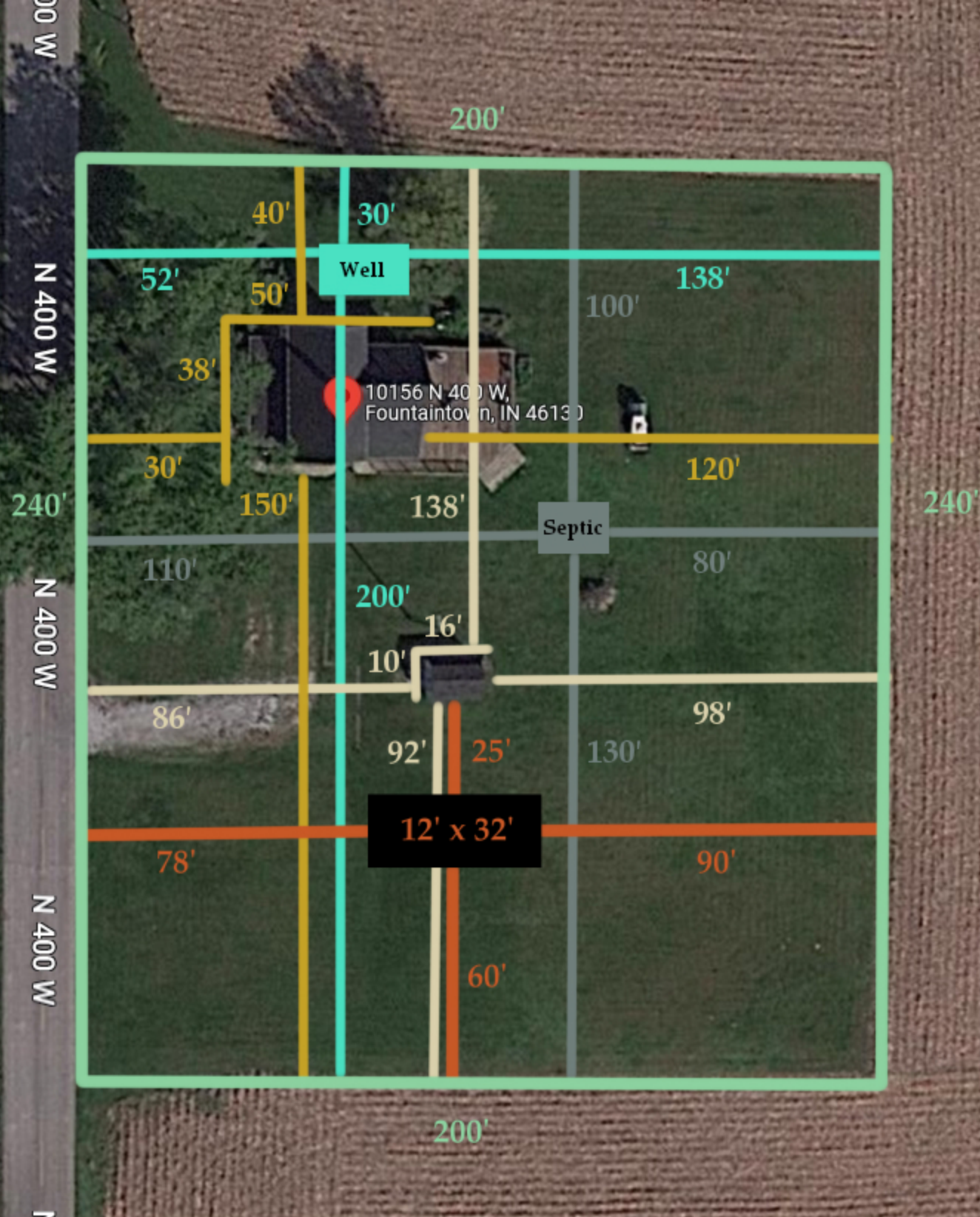
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**The Board of Zoning Appeals may review the applicant’s findings of fact to assist with their decision-making process. Please see below for general guidance related to completing the findings of fact:**

**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.)



**New  
Structure**



**Property  
Lines**



**House**



**Shed**



**Septic**



**Well**



## Property Details

**Location:** 506 W Carey St,  
Fairland, Brandywine Township.

**Property Size:** 0.16-acres.

**Current Land Use:** Vacant  
Commerical.

### Zoning Classification:

C2 (Highway Commerical)

*Intent: This district is established for commercial uses that are closely related to the special needs of the traveling public, interstate commerce, trucking and, in general, vehicular traffic along interstates and major state highways.*

*Development Standards: Require quality time, place, and manner development standards to minimize impacts on adjacent properties while encouraging economic vitality. Minimize light, noise, water, and air pollution.*

*BZA: Be sensitive to aesthetics and the potential for light pollution, noise pollution, pedestrian safety, and vehicular safety.*

**Future Land Use per Comp Plan**  
Town of Fairland Incorporated  
Planning Area

### Surrounding Development

	Zoning	Land Use
North	VR	Single-Family Residential
South	A1	Cropland
East	VR	Single-Family Residential
West	VR/C1	Single-Family Residential / Vacant Commerical

# Staff Report

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**Case Number:** BZA 23-10  
**Case Name:** F and A Martin Holdings LLC –  
 Development Standards  
 Variances

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## Request

**Variances of Development Standards** to allow for use of a lot in the C2 (Highway Commercial) District:

1. With a lot area of 7,040 sq. ft. (minimum 20,000 sq. ft. required).
2. With a lot width of 55-feet (minimum 100-feet required).
3. With road frontage of 55-feet (minimum 80-feet required).
4. Use of an existing driveway:
  - i. Within 100-feet of other driveways;
  - ii. Adjoining a property line (minimum 3-foot setback required).
5. Use of existing gravel parking and maneuvering areas (hard surface required):
  - i. Adjoining the right-of-way of Carey St. (minimum 40-foot setback required);
  - ii. Without identified ADA parking spaces.

## Code Requirement

**UDO Section 2.32 – C2 District Development Standards:** Minimum Lot Area: 20,000 square feet

**UDO Section 2.32 – C2 District Development Standards:** Minimum Lot Width: 100 feet

**UDO Section 2.32 – C2 District Development Standards:** Minimum Lot Frontage: 80 feet

**UDO Section 5.20 A 2 a:** Separation: Multiple Entrance: Two or more driveway shall not be permitted to be installed: Within 100 feet of one another if access is along an arterial or collector street.

**UDO Section 5.20 D:** Distance to Property Line: All driveways shall be at least three (3) feet from the side property line.

**UDO Section 5.60 A:** Surface: All ingress/egress onto a driveway or parking area and required parking lots shall utilize a paved surface of concrete, asphalt, brick pavers, or the like. Gravel, stone, rock, dirt, sand, or grass shall not be permitted as parking surfaces, except the A4 zoning district which may use gravel. Parking of vehicles shall not be permitted on lawns or other pervious-surfaced areas of a lot.

**UDO Section 2.32 – C2 District Development Standards:** Minimum Front Yard Setback: 40 feet for parking lot.

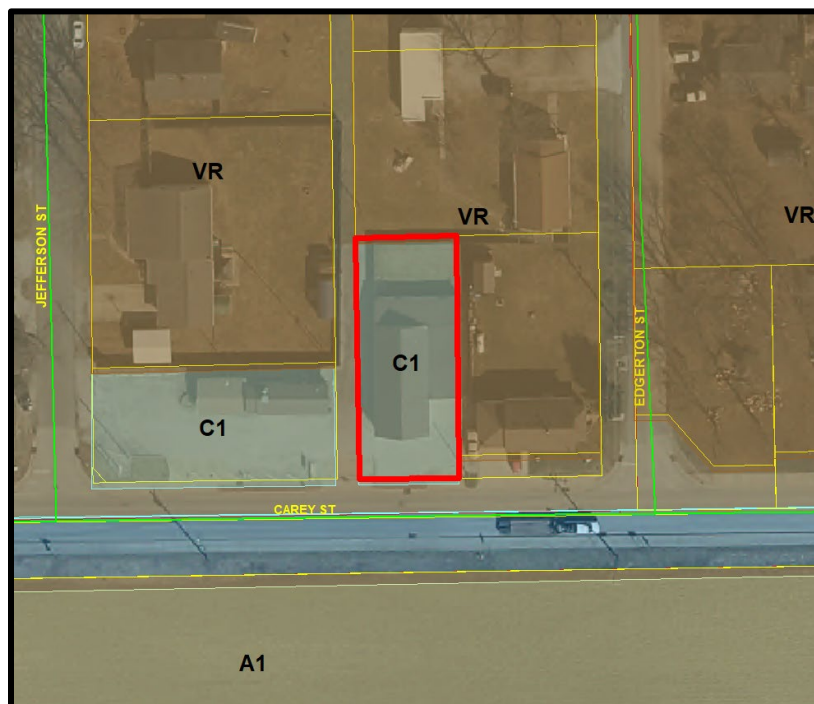
**UDO Section 5.60 F:** Parking for the Disabled.

**Purpose of Requirements:**

- Minimum lot dimensional standards for each zoning district ensure adequate area for development permitted by the zoning designation, adequate road frontage for visibility and access to the lot, and promotes orderly development.
- Driveway separation requirements minimize traffic conflicts between vehicles utilizing intersections and promotes traffic safety.
- Paved parking areas eliminate potential nuisances such as dust and noise caused by the movement of vehicles on gravel or dirt parking areas. Paved parking areas can also have defined parking spaces and drive aisles, allowing for safe and efficient movement of vehicles.
- Parking lot setback requirements limit conflicts between vehicles using parking lots and the public road and allows for greenspace between parking lots and the road to enhance property aesthetics.
- Standards for parking for the disabled ensures that parking lots for commercial development comply with the Americans with Disabilities Act and state codes.

**Property Map**

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## Case Description

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- On February 28, 2023, the Plan Commission unanimously granted a favorable recommendation to rezone the subject property from C1 (Neighborhood Commercial) to C2 (Highway Commercial) to allow for use of the property for a pizza shop. The County Commissioners will hear the rezoning case on March 20, 2023. The rezoning included one stipulation: Use of the property for a pawn shop, quick cash/check cashing, and/or for restaurant or retail generating its primary source of revenue from liquor sales shall be prohibited.
- Per Section 5.01 of the UDO, any land use change that occurs after the effective date of the UDO is subject to all development standards and regulations for the applicable zoning district. Also, Per Section 8.06 of the UDO, the property lost any legal-nonconforming 'grandfathering' status after remaining vacant for more than six months. Therefore, the petitioner must bring the property into compliance with the development standards of the C2 District prior to operation of the restaurant or obtain applicable development standards variances.
- The property currently includes a 2,700 sq. ft. commercial building, paved entrance from Carey St, gravel entrance from the adjacent alley to the west, and gravel parking and maneuvering areas between the building and Carey St. Approval of all variances would allow for use of the property in its current condition.
- Indiana Code requires ADA parking spaces for all commercial uses that provide customer and employee parking.
- The existing structure and structure on the adjacent property to the west currently utilize an aging septic system. The County Health Department has approved use of the existing septic system for a carry-out restaurant without customer seating.
- Historical uses of the property include a grocery/convenience store, sandwich shop, and gas station.
- The Fairland Town Board has provided written support for use of the property for a pizza restaurant.

## Staff Analysis of Findings of Fact

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

Staff Analysis: The property has historically accommodated similar small-scale uses in its current condition. However, ingress/egress into the parking lot and traffic circulation should be appropriately managed to protect the safety of customers visiting the premises.

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 variance would not result in a change to the appearance of the property or approved use of the property, and therefore would not impact adjacent properties.

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 similar use of the property to historical uses that the property has accommodated in its current condition.

### Staff Recommendation

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The property has historically accommodated similar small-scale uses in its current condition. However, ingress/egress into the parking lot and traffic circulation should be appropriately managed to protect the safety of customers visiting the premises.

Staff recommends **APPROVAL** with the following **stipulations**:

1. Variance approval shall only apply to use of the property for a carry-out pizza shop. Change in use of the property shall render the variance void.
2. The only access to the property shall be from the adjoining alley to the west.
3. Parking spaces shall only be located perpendicular to and adjoining the east property line and at least two parking spaces shall be defined with parking bumpers.
4. At least one paved parking space in compliance with Section 5.60 F Parking for the Disabled shall be provided.

### Applicant/Owner Information

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Applicant:	F & A Martin Holdings LLC	Owner:	Same
	506 W Carey St.		
	Fairland, IN 46126		

### Parking Lot Layout as Recommended by Staff Stipulations



Google Maps - 2015

**DEVELOPMENT STANDARDS VARIANCE**  
**FINDINGS OF FACT**

Applicant: F and A Martin Holdings LLC

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 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. It is going to be a place where people can purchase food to take home or have delivered.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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.

Nothing surrounding the business or building will be affected by the remodeling and starting  
of the business.

\_\_\_\_\_  
\_\_\_\_\_

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.

The property will be used for food service.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## Property Details

**Location:** 5021 N Frontage Rd,  
Fairland, Brandywine Township.

**Property Size:** 0.77-acres.

**Current Land Use:** Single-Family  
Residential.

### Zoning Classification:

R1 (Single-Family Residential)

*Intent: This district is established for single-family detached, medium to large sized homes on medium to large sized lots.*

*Development Standards: Promote low-impact development in harmony with a natural setting.*

### 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	R1	Single-Family Res.
South	A1	Cropland
East	R1	Single-Family Res.
West	R1	Single-Family Res.

# Staff Report

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**Case Number:** BZA 23-05  
**Case Name:** Chad Beaver – Development Standards  
Variances

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## Request

**Variances of Development Standards** to allow for an 1,800 sq. ft. accessory structure:

1. In the front yard.
2. Exceeding 50% the square footage of the footprint of the residence.

## Code Requirement

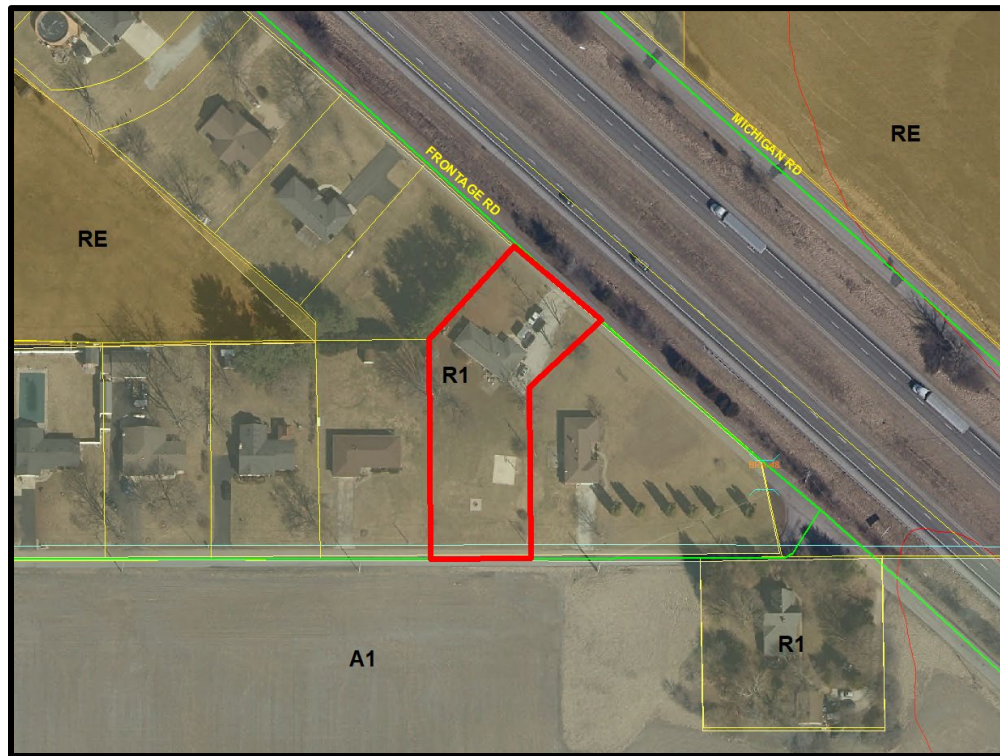
**UDO Section 5.04 C – Placement:** *A permitted accessory structure shall not be placed in the front yard of any lot, unless placed 350 feet or greater from the front property line.*

**UDO Section 5.07 F 1: Maximum Size:** *The total square footage of all enclosed accessory structures on a lot adjoining one or more lots in the RE, R1, R2, VR, M1, M2, MP, VM, IS, C1, C2, I1, I2, or HI Districts shall not exceed fifty percent (50%) of the footprint of the primary structure.*

**Purpose of Requirements:** Prohibiting the construction of accessory structures in the front yard maintains the primary structure as the visual focal point of the property. Limiting the size of residential accessory structures ensures that the residence remains the visual focal point of the property and discourages use of residential accessory buildings for commercial activities utilizing large trucks, large machinery, and/or large equipment.

## Property Map

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## Case Description

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- The petitioner plans to construct a 30'x60' (1,800 sq. ft.) accessory structure at the southeast corner of the property over an existing concrete pad.
- The accessory structure would sit at least 60-feet from the center of CR 500 N.
- The square footage of the accessory structure would equal approximately the same square footage as the house. The property tax card provides the square footage of the house for the square footage calculation.
- Per the UDO, the property includes two front yards because the property includes frontage on both Frontage Rd. and CR 500 N. The house faces Frontage Rd and the yard adjacent to CR 500 N functions as the rear yard of the property.

## Staff Analysis of Findings of Fact

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

Staff Analysis: Construction of the structure would require a building permit and the structure must comply with all building codes before passing a final inspection. The public would not have access to the structure.

**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: An accessory structure that does not exceed the height of the house to the east and placed no closer to the road than the house to the east would not deviate from standard accessory structure placement on corner lots.

**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 significantly reduce the area of the lot available for construction of an accessory structure.

### Staff Recommendation

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The orientation of the lot would render the appearance of the structure as an accessory structure in the rear yard of the adjacent property to the east. The larger size of the subject property in relation to adjacent properties supports allowance of a larger accessory structure, however the size and design of the structure should not overshadow the residential home to the east.

Staff recommends **APPROVAL** with the following **stipulations**:

1. The structure shall not sit closer to CR 500 N than the house on the adjoining property to the east.
2. The structure shall not exceed the height of the house on the adjoining property to the east.

### *Applicant/Owner Information*

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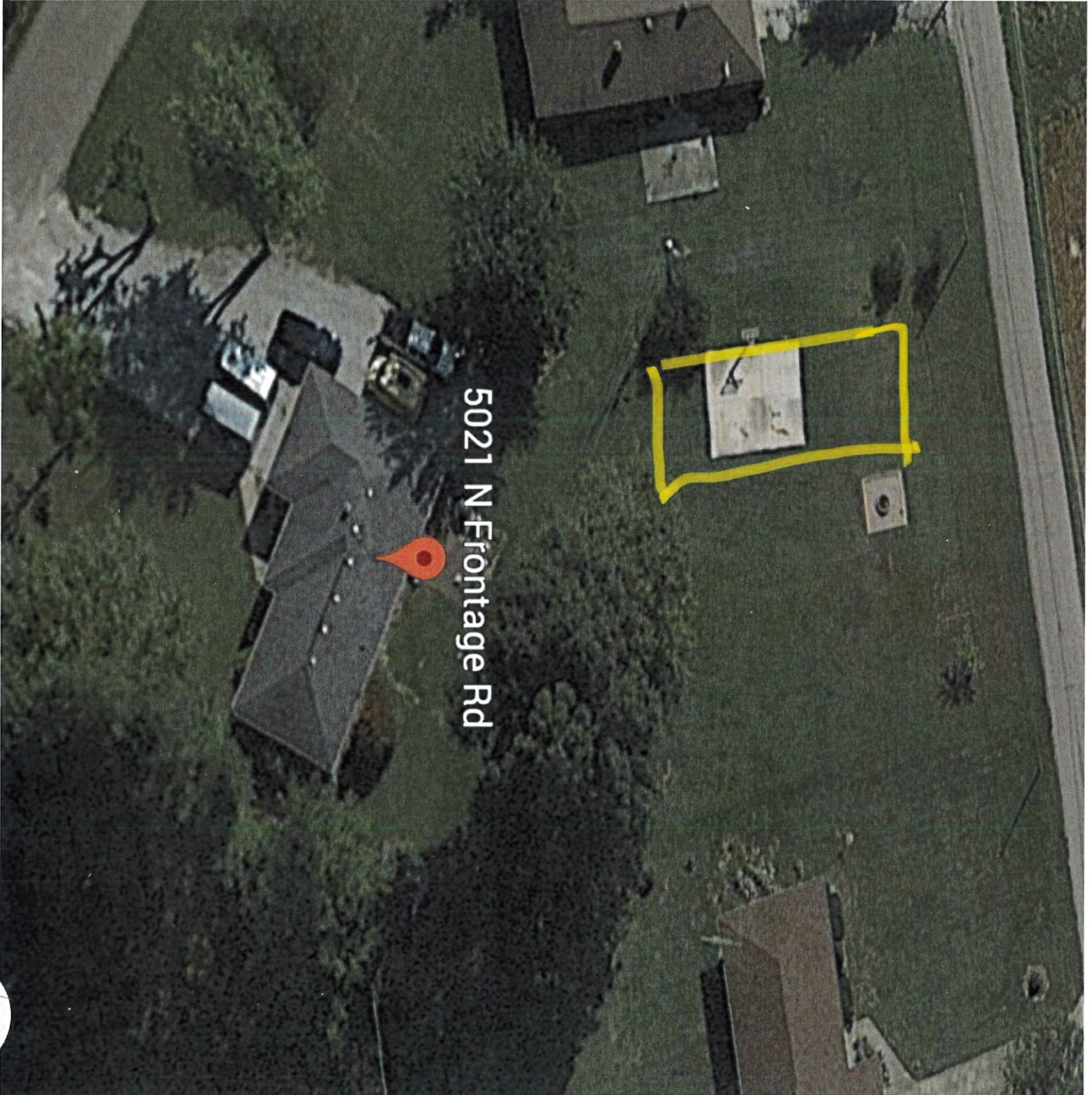
Applicant:	Chad Beaver 5021 N Frontage Rd. Fairland, IN 46126	Owner:	Athena Ann Wampler 5021 N Frontage Rd. Fairland, IN 46126
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### View from CR 500 N of Proposed Building Site



60' from  
Center Rd.  
10' from  
East property  
line



5021 N Frontage Rd

Property Details

**Location:** North of and adjoining 4500 N Michigan Rd, Shelbyville, Brandywine Township.

**Property Size:** 55.07-acres.

**Current Land Use:** Cropland.

**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.

**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	A2	Estate Residential
South	RE	Estate Residential
East	A1, A2, RE	Woodland
West	RE	Estate Residential

# Staff Report

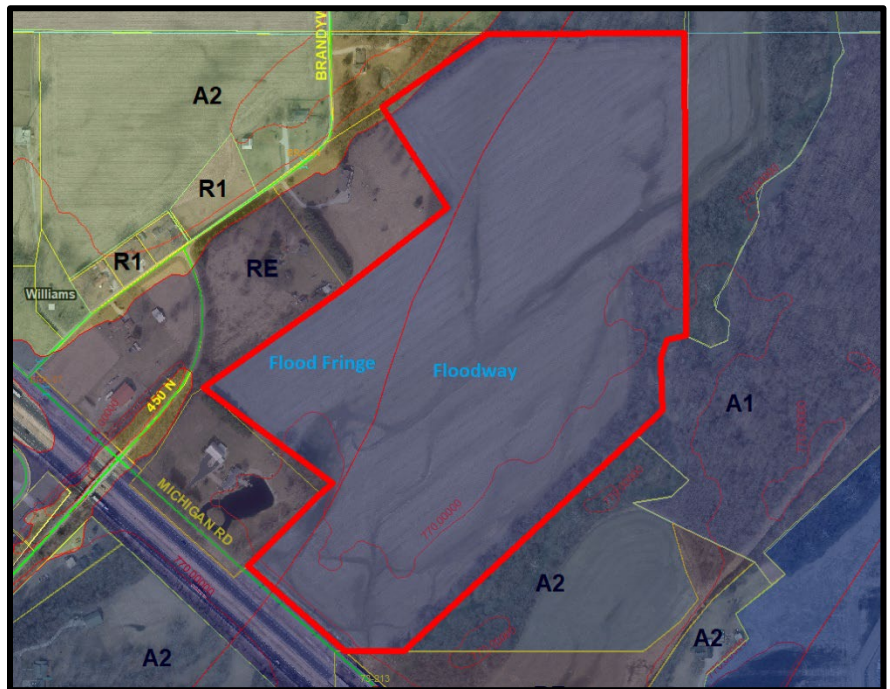
**Case Number:** BZA 23-11

**Case Name:** Roberto Chavez – Use Variance

## Request

**Variance of Use** to allow for a commercial equestrian training and exercise facility in the A1 (Conservation Agricultural) District.

## Property Map



## Case Description

- The UDO only permits commercial stables, equestrian exercise facilities, and equestrian training facilities in the A4 (Agricultural Commerical) District. The petitioner has chosen to request a use variance to permit these uses in the A1 District. Use variances only allow for the specific use requested and do not transfer with the property if sold to an entity other than the petitioner. Staff has recommended stipulations of approval that would require development of the property in compliance with the UDO standards applicable to development in the A4 District.
- The petitioner intends to construct a commercial equestrian training and exercise facility on approximately 6.5-acres located in the Flood Fringe area at the southwest corner of the property.

- Proposed development includes a stable and parking areas. The site would have access to Michigan Rd. through an existing driveway.
- Summary of the petitioner's Statement of Intent:
  - Support facility to the Horseshoe Indianapolis track located east of the subject property.
  - Hours of Operation: 7AM – 5PM, with seasonal variations.
  - Traffic mostly generated by employees and deliveries.
  - Majority of operations conducted indoors.
- The petitioner indicated that the facility would comply with the Rural Keeping of Stabled Horses standards identified in the UDO. These standards include:
  1. Minimum Lot Area: Five (5) acres.
  2. Maximum number of horses: Five (5) horses per acre of lot size. Maximum seventy-five (75) horses.
  3. Stable requirement: Each lot must have one stable, including a stall for each stabled horse on the property. Each stable shall have a minimum main floor area of two hundred forty (240) square feet per one (1) stabled horse. Stall sizes shall be a minimum twelve (12) feet by twelve (12) feet in area.
  4. Setbacks: A stable shall be permitted within the setbacks applicable to a primary structure in the subject zoning district and must be a minimum one hundred (150) feet from the nearest residence.
  5. Pasture turnout of stabled horses: Stabled horses in pasture areas are required to meet all requirements of the Pastured Farm Animals standards, other than the minimum lot area.
    - Minimum Pasturage Area: Two (2) acres
    - Maximum Animal Units: One (1) horse per fenced acre.
  6. Manure management plan: Each property owner wishing to build and operate a stable must submit a manure management plan to the Technical Review Committee. Animal waste shall be disposed of either by sanitary sewer, dumpster removal, composting, or other method approved by the Technical Review Committee. Animal waste may not be allowed to accumulate on the property for more than two weeks, and at no time is the total quantity to exceed thirty (30) cubic yards.
- The portion of the property proposed for development lies within the Federal Emergency Management Agency (FEMA) Special Flood Hazard Area Zone AE (map # 18145C0102C effective on 11/05/2014) Flood Fringe.
  - IDNR does not require a State permit for development in the Flood Fringe.
  - The UDO does require a local permit for development in the Flood Fringe.
    - The UDO requires elevation of structures in the Flood Fringe to two feet above the base flood elevation by elevating the floor of the structure or by elevation of the structure fill.

- The UDO does not include any requirements for alterations to land grade, changes to the landscape, or storage of materials in the Flood Fringe.
- The UDO would allow for development of a private stable in the Flood Fringe subject to the same Floodplain Development Standards without variance approval.

## Staff Analysis of Findings of Fact

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

Staff Analysis: Use and development of the property would comply with all standards for development in the A4 District indicated in the Unified Development Ordinance. Development would not occur in the designated Floodway.

**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: Use and development of the property would comply with all standards for development in the A4 District indicated in the Unified Development Ordinance. Development would not occur in the designated Floodway.

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

Staff Analysis: Proximity of the property to a nearby horse track renders the property desirable for development of an equestrian facility to support the track.

**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 an equestrian facility in compliance with all standards for development in the A4 District to support a nearby horse track facility.

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

Staff Analysis: Development would not occur in the designated Floodway, thereby preserving most of the property as Open Space as recommended by the Comprehensive Plan.

## Staff Recommendation

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**APPROVAL** because proximity of the property to a nearby horse track renders the property desirable for development of an equestrian facility to support the track. Development of the property in compliance with the UDO standards applicable to commercial agricultural development in the A4 District and restriction of development in the designated Floodway would protect the public and use and value of adjacent property.

Staff recommends the following stipulations:

1. Landscape Buffer Yard 'B' shall be installed within the Flood Fringe area along all properties located in the RE (Residential Estate) District: One (1) canopy tree and two (2) ornamental or evergreen trees shall be planted for

2. every sixty (60) feet of contiguous boundary with the adjacent lot. Each tree shall be planted within fifteen (15) feet of the property line, but no closer than five (5) feet to the property line.
3. The driveway shall consist of asphalt or concrete.
4. The site shall include asphalt or concrete ADA parking spaces in compliance with UDO Section 5.60. Other parking and maneuvering areas may consist of a gravel surface.
5. All outdoor site lighting shall include full cut-off fixtures.
6. No development, including alteration of land unrelated to pasture area, shall be permitted in the designated Floodway.

*Applicant/Owner Information*

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Applicant:	Roberto Chavez 7389 N 875 W Indianapolis, IN 46259	Owner:	Lynn S. Lewis 2745 E Vandalia Rd. Flat Rock, IN 47234
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Attorney: Jacob S. Brattain, McNeely Law LLP  
2177 Intelliplex Drive, Ste. 251  
Shelbyville, IN 46176

**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: Equestrian Training, Exercising, and Boarding Facility.  
A new facility will be constructed to train and support horses racing at the Horseshoe Indianapolis track.  

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2. Days & Hours of Operation: Typically 7am-5pm, with potential variations due to seasonality
3. Maximum Number of Customers per Day/Week/Month: Frequency will vary greatly depending on the time of year.  
Winter will be minimal, and summer will have increased pickup/ drop off. Most traffic will be employees of the business.  

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4. Type and Frequency of Deliveries: Pickup/Deliveries of Horses increases in the summer, less in winter. Food and supplies will be delivered regularly.
5. Description of any Outdoor Storage: The horses will be enclosed in the stables, occasional parking of horse trailers during pickup/drop off, but the majority of operations should be contained inside.  

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6. Description, Size, and Placement of any Signage: Identifying sign will be constructed at the driveway entrance in compliance with applicable standards.  

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7. Description of Waste Disposal: Site waste will be disposed of in accordance with Shelby County Ordinance 2015-14 for any stabled horses, and residual waste will be via dumpster services.  

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8. Existing and/or Proposed Building and Site Improvements Pertaining to Proposed Use (ex. parking lot, landscaping, commercial upgrades to building, etc.): Construction of the Equestrian Facility, including a stable barn and parking areas. All construction will be in accordance with County and State building standards, and will be subject to review by all applicable officials.  

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**USE VARIANCE  
FINDINGS OF FACT**

Applicant: Jacob Brattain, McNeelyLaw LLP on behalf of Roberto Chavez

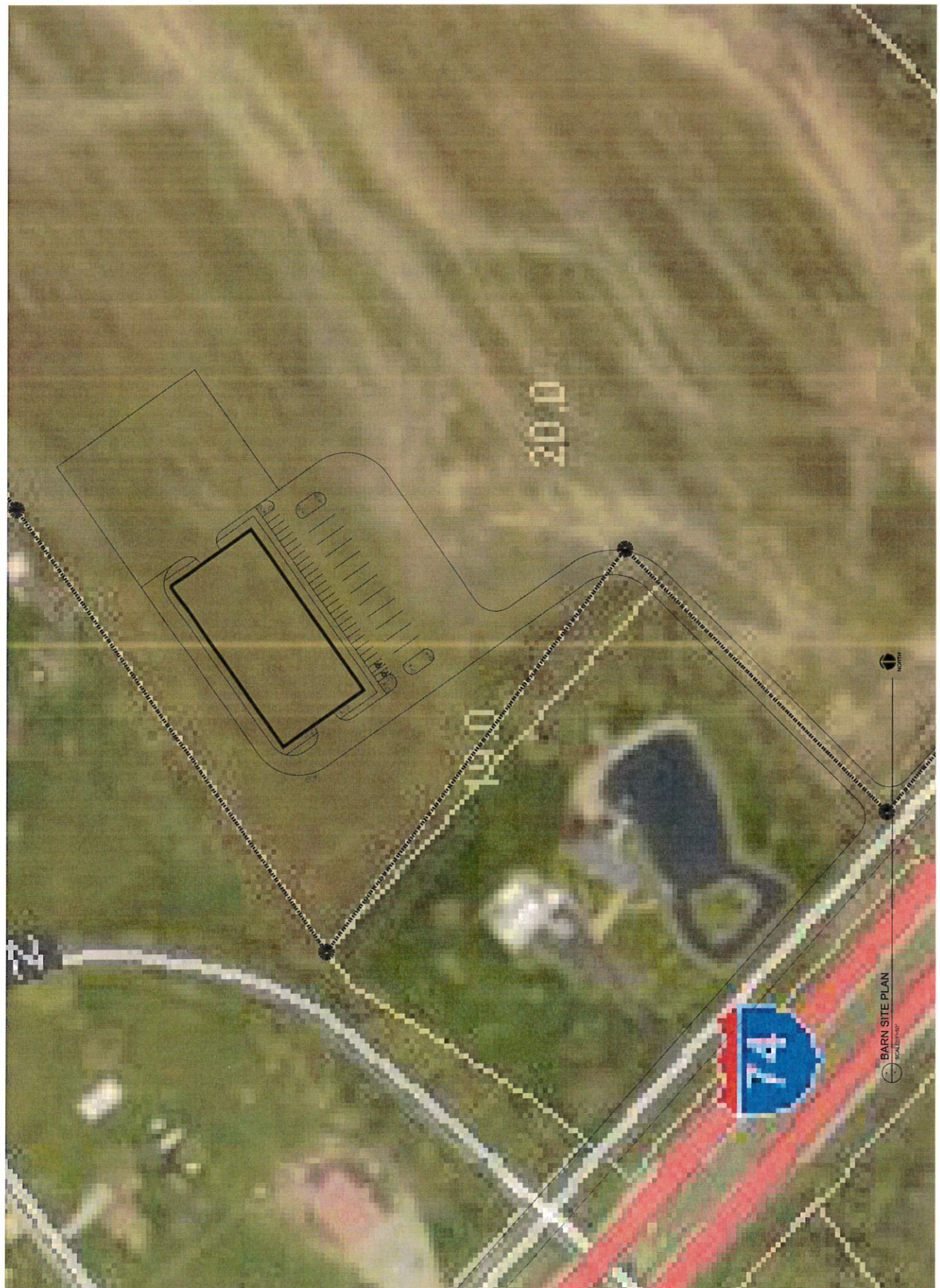
Case #: \_\_\_\_\_

Location: Parcel No.: 73-06-11-100-020.000-004

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. Shelby County recognizes that agriculture is an important part of our history and future, and this use variance will allow the Property to continue to be used for agricultural purposes, while also supporting other businesses and members 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.  
The Property has historically been zoned agricultural and would continue to be used for agricultural purposes. The Property is predominantly surrounded by other agricultural and rural housing, and borders an existing use that involves equestrian related facilities.  
The proposed use would be compatible with the adjacent districts listed in the Comprehensive Plan.  
\_\_\_\_\_  
\_\_\_\_\_
3. **Practical Difficulty:** The need for the variance arises from some condition particular to the property involved. The Property is a low-lying parcel adjacent to the Horseshoe Indianapolis, making consistent agricultural farming uncertain, however, allowing for the use variance means the Property will remain primarily agricultural while supporting an adjacent use consistent with the Comprehensive Plan.  
\_\_\_\_\_  
\_\_\_\_\_
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. The Property is hard to consistently farm, and allowing for a complimentary agricultural use is the highest and best use of a property that otherwise might not remain agricultural.  
\_\_\_\_\_  
\_\_\_\_\_
5. **Comprehensive Plan:** The granting of the variance does not interfere substantially with the Comprehensive Plan. The Shelby County Comprehensive Plan states that agriculture will continue to have an important role in the county and that the county should find positive ways to support the need for measured growth while also enabling continued agricultural operations as an important need for the future of the county. Approving the requested use variance supports an agricultural growth opportunity that fills a business need in the community.  
\_\_\_\_\_  
\_\_\_\_\_





## Property Details

**Location:** 4136 S Marietta Rd,  
Shelbyville, Hendricks Township.

**Property Size:** 4.43-acres.

**Current Land Use:** Residential Estate  
/ Commerical.

### 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.

*BZA:* Allow a special exception use only when it is compatible with the surrounding residential areas.

A2 (Agricultural)

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

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

*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.

Continued next page...

# Staff Report

**Case Number:** BZA 23-07

**Case Name:** Michael James – Special Exception &  
Development Standards Variances

## Request

**Special Exception** to allow for temporary use of property for a Type 3 Home Business (landscape contractor) in the RE (Residential Estate) District.

**Variances of Development Standards** from Type 3 Home Business Standards to allow:

1. Parking of more than fourteen (14) operable trucks and trailers on the property.
2. Unscreened outdoor storage of commerical vehicles stored outside between 9:00 PM and 5:00 AM
3. Unscreened outdoor storage of commerical products, materials, supplies, waste, scrap, and the like.

## Code Requirement

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

**UDO Section 5.35 (Type 3 Home Business Standards) E 3 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.

**UDO Section 5.35 (Type 3 Home Business Standards) E 4 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.

**UDO Section 5.35 (Type 3 Home Business Standards) E 4 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.

## Property Details

### Surrounding Development

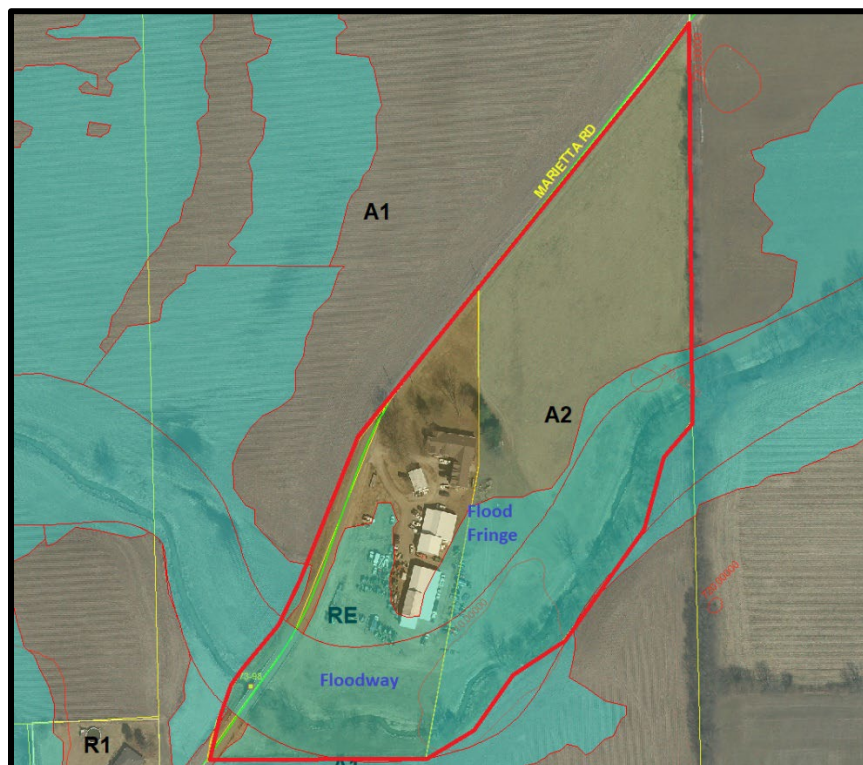
	Zoning	Land Use
North	A1	Cropland
South	A1	Cropland
East	A1	Cropland
West	A1	Cropland

### 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.

The UDO limits the number vehicles and regulates the size and positioning of outdoor storage areas related to Type 3 home businesses to limit evidence of use of residential property for commercial purposes, thereby protecting the character of rural residential areas.

### Property Map



## Case Description

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- The petitioner currently operates a landscape service from the property. The petitioner indicated that the service provides mowing and litter removal services for public roadways and snow removal services. The petitioner also resides on the property.
- Summary of the petitioner's Statement of Intent:
  - Use: Storage of equipment, maintenance of equipment, administrative work.
  - Employees: Fifteen to thirty who meet on site for an organizational meeting once a week. During the winter months, an average of five employees on site.
  - Hours of Operation: 7AM – 7PM, Monday – Friday.
  - Customers: None.
  - Deliveries: Less than one per month.
  - Outdoor Storage: Mowers, trucks, tractors, and equipment.
  - Waste Disposal: Four-yard dumpster serviced weekly.
- The petitioner indicated that he plans to relocate business operations to property located at 5073 W SR 44, Shelbyville within twelve to eighteen months.
- In December of 2022, the Shelby County Recycling District Code Compliance Officer received a complaint regarding the outdoor storage of inoperable vehicles on the subject property. After investigation, the Code Compliance Officer determined that the property included operable vehicles and equipment related to a business and forwarded the complaint to the Planning Director. The Planning Director notified the petitioner of the violation and the petitioner promptly applied for a variance.
- Historical aerial photography shows a significant amount of equipment stored on the property over the past ten years.
- A portion of the property lies within the Indiana Department of Natural Resources (IDNR) designated Special Flood Hazard Area Floodway and Flood Fringe. The UDO does not require a permit for storage of equipment in the Special Flood Hazard Area or impose any regulations regarding the storage of equipment.

## Staff Analysis of Findings of Fact

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### Special Exception

- 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 RE District to allow for single-family dwellings and low-impact development in harmony with the natural setting. The UDO states: *Allow a special exception use (in the RE District) only when it is compatible with the surrounding residential areas.* The property sits within an area relatively isolated from

residential development and several residential properties in the area include outdoor storage of similar equipment. The Comprehensive Plan designates the property for future agricultural use and rural homesites. Use of property including a rural homesite for a Type 3 Home Business would not conflict with the recommendation of the Comprehensive Plan.

**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 property had access to Marietta Rd, defined as a minor collector by the Comprehensive Plan and has nearby access to SR 44. These roads can accommodate additional traffic generated by a Type 3 Home Business.

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

Staff Analysis: The property sits within an area relatively isolated from residential development and several residential properties in the area include outdoor storage of similar equipment. Use of the property for storage and maintenance of lawn care equipment resembles the use of agricultural properties in the area for storage and maintenance of agricultural equipment.

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

Staff Analysis: The property sits within an area relatively isolated from residential development and several residential properties in the area include outdoor storage of similar equipment. Use of the property for storage and maintenance of lawn care equipment resembles the use of agricultural properties in the area for storage and maintenance of agricultural equipment.

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

Staff Analysis: Use of the property for storage and maintenance of lawn care equipment does not conflict with agricultural character of the area, and therefore would not impact surrounding property values.

**Development Standards – Request 1 & 2**

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

The Comprehensive Plan classifies Marietta Rd. as a minor collector traveled by a greater number of motorists than local county roads. Outdoor storage of commercial vehicles and equipment in the front yard of a residential homesite in view of the travelling public would impact the overall aesthetic character of 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.**

Outdoor storage of commercial vehicles and equipment in the front yard of a residential homesite would impact the aesthetic character of the area, potentially impacting the use and value of adjacent residential properties.

**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: The property includes adequate area behind the accessory structures for the storage of equipment related to the home-based business.

### Development Standards – Request 3

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

The accessory structures would screen commercial vehicles and equipment stored within 20-feet directly behind the accessory structures 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.**

Residential structures would not have visibility of commercial vehicles and equipment stored in the rear yard.

**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: Erection of a fence would not serve to screen commercial vehicles and equipment from any adjacent residential properties or the road.

### Staff Recommendation

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Use of the property for storage and maintenance of lawn care equipment resembles the use of agricultural properties in the area for storage and maintenance of agricultural equipment. However, storage of commercial vehicles and equipment in the front yard of a residential homesite impacts the aesthetic character of Marietta Rd.

Staff recommends:

**APPROVAL** of the Special Exception with the following **stipulation**:

1. Operation of the business shall comply with Section 5.35 HB-03: Type 3 Home Business Standards of the Unified Development Ordinance, other than Section 5.35 E 4 b.

**APPROVAL** of Development Standards Variance #3 with the following **stipulation**:

1. Equipment, products, materials, supplies, waste, scrap, and the like shall be stored indoors or within 20-feet directly behind the accessory structures. Between the hours of 9:00 PM and 5:00AM, commercial vehicles shall also be stored indoors or within 20-feet directly behind the accessory structures.

**DENIAL** of Development Standards Variances #1 & #2. If the Board chooses to approve these variances, Staff recommends placing a 2-year time limit on variance approval.

### *Applicant/Owner Information*

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Applicant: Michael A James  
4136 S Marietta Rd.  
Shelbyville, IN 46176

Owner: Same

Attorney: H. Curtis Johnson  
416 S Harrison St.  
Shelbyville, IN 46176

## Existing Property Conditions



Staff Photograph – March 7, 2023

# J&M CONTRACTING, INC.

4136 South Marietta Rd  
Shelbyville, IN 46176  
317-979-7805

Board of Zoning Appeals  
25 West Polk Street, Room 201  
Shelbyville, IN 46176

RE: Petitions for Use Variance  
Parcels: 4136 S Marietta Rd., Shelbyville  
5073 W SR 44, Shelbyville

Dear Board Members:

I am submitting two use variance petitions. I am petitioning the BZA for a temporary use variance for my home located at 4136 S Marietta Rd., Shelbyville, to store the mowers, trailers and related equipment from my business, J & M Contracting, Inc. until such time as I can construct a new building to house all of the equipment on a separate parcel. To that end, I am also petitioning the BZA for a use variance on a parcel I purchased with the intent to build such a structure, located at 5073 W SR 44, Shelbyville.

By way of background, I founded J & M in 1998 and have used my home for equipment storage since that time. I was unaware that I was required to obtain a variance in order to do so and I apologize for that. J & M's primary businesses are mowing and litter removal contracts with INDOT. We mow and collect litter along interstates and state highways throughout the state. INDOT is J & M's only client for these services, which, by far, account for the lion's share of the company's business. However, in the winter months, we also engage in snow removal for RASK, Inc. Depending upon the time of year, J & M typically has between 15-30 employees.

We currently work from 8 a.m. to 5 p.m. Monday through Friday. These times may vary during peak season (May-Oct). We have an organizational meeting on Monday mornings with everyone. However, many of the employees carpool, so there are typically 4-5 vehicles that carry all the workers to the meeting. After this Monday organizational meeting, the teams deploy with the equipment and typically do not return to the shop until Friday or the particular project is done.

In the summer months, it is unusual that anyone is at the shop, except that I might be there doing repairs on equipment, if needed. During the winter months, there is an average of 5 employees working in the shop, doing maintenance and administrative work.



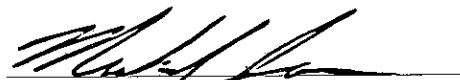
Given the nature of our work, we do not have any customers come to the shop and have no form of retail sales.

Even before I received notice of the zoning issue, I had already begun the process of trying to move my equipment to a dedicated storage facility. To that end, I purchased real estate at 5073 W SR 44, Shelbyville, with an eye towards putting a building on that property to contain all the mowers and related equipment. I have already been in touch with a builder to begin the planning process for the construction of the storage facility. Should the Board approve that petition, I intend that that storage facility will hold all of the equipment internally on that parcel, once complete.

I would anticipate that, if the variance for 5073 W SR 44 is approved, that process will take approximately 12-18 months to get the facility fully operational. In the meantime, I need to a place to store the mowers and equipment and so I am requesting a temporary variance for my home so that I may continue to store the mowers there as I have done for all these years.

I appreciate your time and consideration.

Best regards,



Michael James, President  
J & M Contracting, Inc.

**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: Storage of mowers and related equipment along with maintenance thereof.  
\_\_\_\_\_
  
2. Days & Hours of Operation: 7 a.m. to 7 p.m. Monday through Friday  
\_\_\_\_\_
  
3. Maximum Number of Customers per Day/Week/Month: None. We mow for INDOT in the summer and do year round for them. In the winter we do some snow removal work but no customers ever come.  
\_\_\_\_\_
  
4. Type and Frequency of Deliveries: less than 1/month.  
\_\_\_\_\_
  
5. Description of any Outdoor Storage: Several tractors, mowers and trucks.  
\_\_\_\_\_  
\_\_\_\_\_
  
6. Description, Size, and Placement of any Signage: There is no signage. On one of the entry doors to the shop in 10"x10" lettering says "J & M Contracting, Inc".  
\_\_\_\_\_
  
7. Description of Waste Disposal: 4 yard dumpster serviced weekly.  
\_\_\_\_\_
  
8. Existing and/or Proposed Building and Site Improvements Pertaining to Proposed Use (ex. parking lot, landscaping, commercial upgrades to building, etc.): Please see attached for current site plan (no proposed changes made to this parcel).  
\_\_\_\_\_  
\_\_\_\_\_

**USE VARIANCE  
Findings Of Fact**

Applicant: Michael A. James

Case #:

Location: 4136 S. Marietta Rd., Shelbyville, IN 46176

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.**

I have been using my home to store the mowers, trailers and related equipment from my business for 25 years, not knowing that a variance was needed to do so. During that time, I have tried to keep the storage of my equipment orderly and be a good neighbor. The storage of the mowers entails minimal traffic (e.g. drop off/pick up of equipment). I do not have any consumer traffic at my home. All maintenance work is done in an enclosed facility with a concrete floor, with any waste products properly disposed of. With the exception of actually seeing the mowers and equipment, there are no externalities for 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.**

I own the 7.8 acre parcel to the east and north. This ground has been used for agriculture purposes including corn and soybeans and is currently in hay. To the west lies Marietta Road and west and north of that is a farm field, adjacent to which I own 2 developed parcels to the southwest. To the south lies a farm field.

I have been keeping the mowing equipment at my home for 25 years and, to my knowledge, there have been no complaints about any adverse impacts on adjacent property owners, at least until this zoning issue came to light.

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

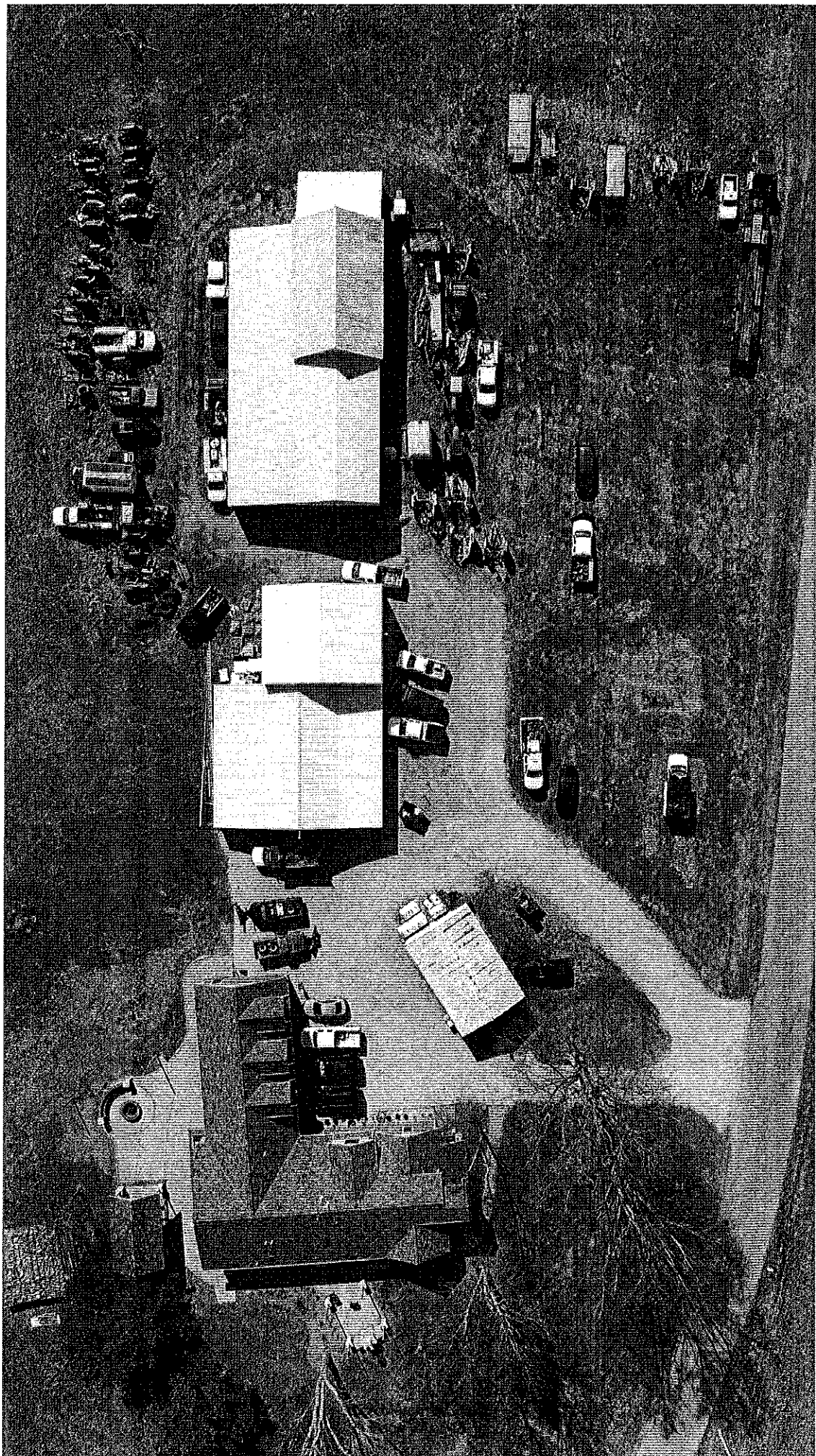
The area around my home is largely agricultural, and mowing is basically an agricultural business. It is consistent with the general usage of the area. Furthermore, I have been using the house for storage of the mowing equipment for 25 years without issue.

**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.**

I employ 15-30 people in my business, depending upon the season. This is my only job and I am proud of the business and jobs that I have created. If I am unable to keep my mowing equipment at my home, at least until another location is secured, it will create a very great and unnecessary hardship as I am unsure of how I would be able to operate this business on which my family, and the families of my employees, rely.

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

The Comprehensive Plan envisions area around my home maintaining its agricultural nature. Again, mowing is in the agricultural genre and fits within the Comprehensive Plan.



## Property Details

**Location:** 5073 W SR 44, Shelbyville, Hendricks Township.

**Property Size:** 4.65-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.*

### 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	RE	Estate Residential
South	A1	Cropland
East	A1	Cropland
West	A1	Cropland

# Staff Report

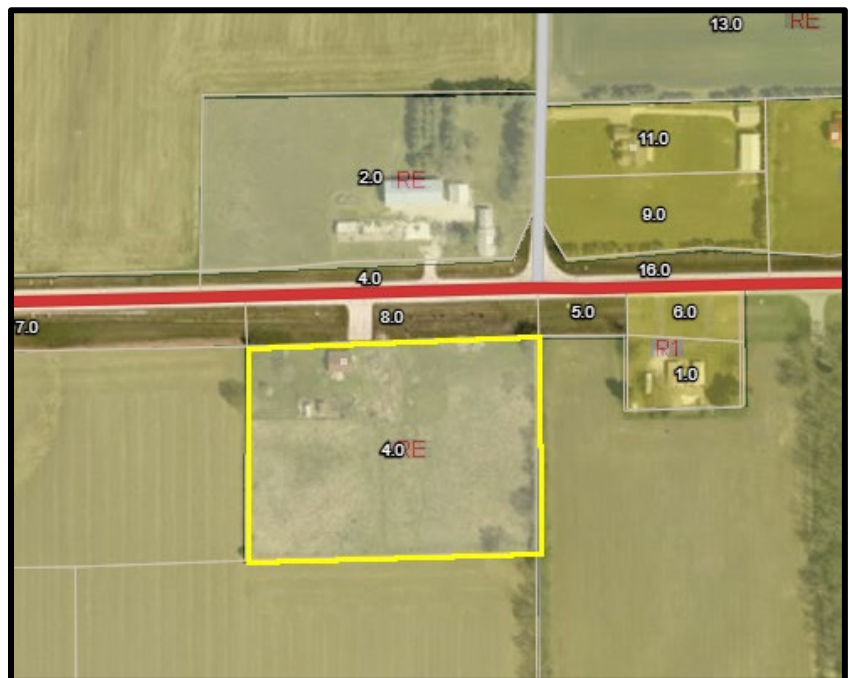
**Case Number:** BZA 23-08

**Case Name:** Michael James – Use Variance

## Request

**Variance of Use** to allow for development of a landscape contractor's office and yard in the RE (Residential Estate) District.

## Property Map



## Case Description

- The petitioner currently operates his landscape contracting company from his residential property located at 4136 S Marietta Rd. He plans to relocate the business to the subject property within twelve to eighteen months.
- Proposed development includes 20,800 sq. ft. building and gravel parking and maneuvering areas. The development would utilize an existing paved driveway within the right-of-way of SR 44. The property currently includes a dilapidated structure that the petitioner plans to remove.

- Summary of the petitioner’s Statement of Intent:
  - Use: Indoor storage and maintenance of equipment.
  - Employees: Fifteen to thirty.
  - Hours of Operation: 7AM – 6PM, Monday – Friday.
  - Customers: None.
  - Deliveries: Less than one per month.
  - Outdoor Storage: None.
  - Waste Disposal: Four-yard dumpster serviced weekly.
- The building on the property previously included a gift shop. In August of 2013, the BZA denied a variance request under previous property ownership for use of the property for a paintball facility.
- 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 if the building will include running water, and drainage infrastructure.
- 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 that the petitioner apply for a variance rather than a rezoning due to the incompatibility of most uses permitted in the required I1 (Light Intensity Industrial) District with adjacent residential uses.
- Staff has also recommended prohibiting outdoor storage of commercial equipment and implementation of landscaping standards applicable to contractor’s operations in the I1 District to mitigate any significant aesthetic, noise, and light impacts to adjacent residential properties. However, Staff does not recommend paving of the parking area to allow the small-scale commercial business to remain consistent with the rural character of the area.

## Staff Analysis of Findings of Fact

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**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. The existing driveway complies with all UDO requirements for commercial driveways.

**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: Prohibiting outdoor storage of commercial equipment and implementation of landscaping and lighting standards applicable to contractor’s operations in the I1 District would mitigate any significant aesthetic, noise, and light impacts to adjacent residential properties.

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

Staff Analysis: Noise and traffic generated by the high traffic volumes of SR 44 render the property less desirable for residential development and more desirable for a small-scale commercial development that involves travel to off-site worksites.

**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 a property with direct access to SR 44 and convenient access to I-65.

**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.

## Staff Recommendation

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Noise and traffic generated by the high traffic volume of SR 44 render the property less desirable for residential development and more desirable for a small-scale commercial development that involves travel to off-site worksites. However, approval of the variance should include stipulations to mitigate any significant aesthetic, noise, and light impacts to adjacent residential properties.

Staff recommends **APPROVAL** with **stipulations**:

1. The size and location of the building and parking areas shall be consistent with the Site Plan submitted with the variance application.
2. Outdoor storage of vehicles, equipment, product, supplies, materials, waste or scrap, pallets, and the like shall not be permitted.
3. All landscaping requirements for properties in the I1 (Light Intensity Industrial) District identified in the UDO shall apply to the development. Specifically:
  - a. One (1) canopy tree and one (1) ornamental or evergreen tree per sixty (60) lineal feet of frontage shall be planted along SR 44.
  - b. Landscape Buffer Yard 'B' shall be installed along all property lines: One (1) canopy tree and two (2) ornamental or evergreen trees shall be planted for every sixty (60) feet of contiguous boundary with the adjacent lot. Each tree shall be planted within fifteen (15) feet of the property line, but no closer than five (5) feet to the property line.
  - c. At least ten (10) deciduous trees shall be planted or preserved on the lot.
4. All outdoor site lighting shall include full cut-off fixtures and the maximum allowable light at a property line shall be five (5) lux.



*Applicant/Owner Information*

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Applicant:	Michael A James 4136 S Marietta Rd. Shelbyville, IN 46176	Owner:	Same
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Attorney: H. Curtis Johnson  
416 S Harrison St.  
Shelbyville, IN 46176

### View of Adjacent Development at the Intersection of SR 44 & CR 500 W



### View of Adjacent Development Directly North of Property



# J&M CONTRACTING, INC.

4136 South Marietta Rd  
Shelbyville, IN 46176  
317-979-7805

Board of Zoning Appeals  
25 West Polk Street, Room 201  
Shelbyville, IN 46176

RE: Petitions for Use Variance  
Parcels: 4136 S Marietta Rd., Shelbyville  
5073 W SR 44, Shelbyville

Dear Board Members:

I am submitting two use variance petitions. I am petitioning the BZA for a temporary use variance for my home located at 4136 S Marietta Rd., Shelbyville, to store the mowers, trailers and related equipment from my business, J & M Contracting, Inc. until such time as I can construct a new building to house all of the equipment on a separate parcel. To that end, I am also petitioning the BZA for a use variance on a parcel I purchased with the intent to build such a structure, located at 5073 W SR 44, Shelbyville.

By way of background, I founded J & M in 1998 and have used my home for equipment storage since that time. I was unaware that I was required to obtain a variance in order to do so and I apologize for that. J & M's primary businesses are mowing and litter removal contracts with INDOT. We mow and collect litter along interstates and state highways throughout the state. INDOT is J & M's only client for these services, which, by far, account for the lion's share of the company's business. However, in the winter months, we also engage in snow removal for RASK, Inc. Depending upon the time of year, J & M typically has between 15-30 employees.

We currently work from 8 a.m. to 5 p.m. Monday through Friday. These times may vary during peak season (May-Oct). We have an organizational meeting on Monday mornings with everyone. However, many of the employees carpool, so there are typically 4-5 vehicles that carry all the workers to the meeting. After this Monday organizational meeting, the teams deploy with the equipment and typically do not return to the shop until Friday or the particular project is done.

In the summer months, it is unusual that anyone is at the shop, except that I might be there doing repairs on equipment, if needed. During the winter months, there is an average of 5 employees working in the shop, doing maintenance and administrative work.

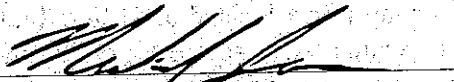
Given the nature of our work, we do not have any customers come to the shop and have no form of retail sales.

Even before I received notice of the zoning issue, I had already begun the process of trying to move my equipment to a dedicated storage facility. To that end, I purchased real estate at 5073 W SR 44, Shelbyville, with an eye towards putting a building on that property to contain all the mowers and related equipment. I have already been in touch with a builder to begin the planning process for the construction of the storage facility. Should the Board approve that petition, I intend that that storage facility will hold all of the equipment internally on that parcel, once complete.

I would anticipate that, if the variance for 5073 W SR 44 is approved, that process will take approximately 12-18 months to get the facility fully operational. In the meantime, I need a place to store the mowers and equipment and so I am requesting a temporary variance for my home so that I may continue to store the mowers there as I have done for all these years.

I appreciate your time and consideration.

Best regards,



Michael James, President  
J & M Contracting, Inc.

**STATEMENT OF INTENT (ONLY REQUIRED FOR VARIANCE 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: I hope to building a barn for storage and maintenance of equipment related to the mowing, litter collection and snow removal business.  
All equipment would be stored within the barn.

2. Days & Hours of Operation: Monday- Friday, 7 a.m.- 6 p.m.

3. Maximum Number of Customers per Day/Week/Month: None. We mow for INDOT in the summer and do year round for them. In the winter we do some snow removal work but it is rare that any customer

4. Type and Frequency of Deliveries: less than 1/month.

5. Description of any Outdoor Storage: I intend to build a storage building so that there is no outdoor storage

6. Description, Size, and Placement of any Signage: None

7. Description of Waste Disposal: 4 yard dumpster serviced weekly

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

**USE VARIANCE  
Findings Of Fact**

Applicant: Michael A. James

Case #:

Location: 5073 W. SR 44., Shelbyville, IN 46176

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.**

I hope to build a large pole barn on this property to store equipment used in my mowing, litter & snow removal business. My business is primarily with INDOT, mowing and collecting litter along state highways and interstates and, therefore, there is no customer traffic. Any maintenance on the equipment will be done inside the structure, which will have a concrete floor and any waste products will be properly disposed of. There would be no adverse impacts on 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.**

The use of the adjacent properties will be unaffected by the variance. This is an agricultural area, interspersed with homes, many of which have their own large pole barns. It is my intention that all of my equipment will be kept in the storage facility, once complete. My mowing business is generally agricultural in character which fits with this area. There is nothing in my proposal which will adversely impact the value of the adjacent properties.

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

The area around the parcel is largely agricultural, and mowing is basically an agricultural business. Previously, the parcel was used for commercial purposes (country store and gift shop). It is consistent with the general usage of the area and this parcel's past usage. Building a home on the parcel, given that it is located on a state highway, would create more dangers than the proposed usage.

**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.**

I employ 15-30 people in my business, depending upon the season. This is my only job and I am proud of the business and jobs that I have created. I recently learned that the use of my home for the storage and maintenance of the machinery for the mowing business is not permitted and so I have submitted a variance for that parcel simultaneously herewith. My idea is to continue to use my home for the storage of the equipment, as I have done for 25 years without prior complaint, until I can construct a building on a separate parcel to contain the equipment. If this variance is denied, I will need to find another parcel on which to store my equipment and there will be a delay in transitioning the equipment away from my home. If no accommodation is made on either parcel that would allow me to store my equipment, it will create a very great and unnecessary hardship as I am unsure of how I would be able to operate this business on which my family, and the families of my employees, rely.

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

The Comprehensive Plan envisions area around my home maintaining its agricultural nature. Again, mowing is in the agricultural genre and fits within the Comprehensive Plan.

SR 44

