

**Shelby County  
Board of Zoning Appeals**

**May 9, 2023 at 7:00 PM**

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# MEETING AGENDA

## Shelby County Board of Zoning Appeals May 9, 2023, 7:00 P.M.

### CALL TO ORDER

### ROLL CALL

### APPROVAL OF MINUTES

Minutes from the February 14, 2023 meeting.

Minutes from the March 14, 2023 meeting.

### OLD BUSINESS

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

### NEW BUSINESS

**BZA 23-15 – LESTER SMITH:** USE VARIANCE. Located east of and adjoining 7392 W 500 N, Fairland, Sugar Creek Township.

**BZA 23-04 – DOUGLAS C HUNT:** USE & DEVELOPMENT STANDARDS VARIANCES. Located at 1796 W Washington Ave, Shelbyville, Addison Township.

**BZA 23-13 – RELIGIOUS RECONSTRUCTION ORGANIZATION, INC:** DEVELOPMENT STANDARDS VARIANCE. Located at 8700 S SR 9, Flat Rock, Washington Township.

**BZA 23-16 – FOUNTAINTOWN CHRISTIAN CHURCH:** DEVELOPMENT STANDARDS VARIANCES. Located at 797 W Brookville Rd, Fountaintown, Van Buren Township.

**V22-19 – H FARMS LLC:** ZONING VIOLATION. Located at 5590 W 1100 N, Fountaintown, Moral Township.

### DISCUSSION

#### APPROVED HEARING OFFICER CASES

**BZA 22-30 – ORLANDO MOJICA:** DEVELOPMENT STANDARDS VARIANCE. Located at 4951 W 700 N, Fairland, Moral Township. *Approved March 14, 2023.*

**BZA 23-06 – STEPHEN COX:** DEVELOPMENT STANDARDS VARIANCE. Located at 9875 N 675 W, Fairland, Moral Township. *Approved March 14, 2023.*

**BZA 23-13 – SECOND CIRCLE INVESTMENTS, LLC:** DEVELOPMENT STANDARDS VARIANCE. Located at 385 W Carey St, Fairland, Brandywine Township. *Approved March 30, 2023.*

**BZA 23-14 – MICHAEL MOULDER:** DEVELOPMENT STANDARDS VARIANCES. Located at 8028 S Division Rd, Shelbyville, Washington Township. *Approved April 14, 2023.*

## **VIOLATION UPDATES**

## **RULES OF PROCEDURE**

## **ADJOURNMENT**

The next regular meeting of the Shelby County Board of Zoning Appeals is scheduled for Tuesday, **June 13, 2023** at **7:00 PM**.

# Floodplain Development Standards Variance

## FINDINGS OF FACT

**Applicant:** Roberto Chavez

**Case #:** BZA 23-11

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

1. The approval will be injurious to the public health, safety, morals, and general welfare of the community.

*Use of fill to remove the area from the floodplain to allow for development of an equestrian training and exercise facility would negatively impact the public.*

2. The use and value of the area adjacent to the property included in the variance will be affected in a substantially adverse manner.

*Use of fill to remove the area from the floodplain to allow for development of an equestrian training and exercise facility would negatively impact surrounding properties.*

3. The need for the variance does not arise from some condition peculiar to the property involved.

*No condition particular to the property was identified to warrant grant of a variance.*

4. The strict application of the terms of the Zoning Ordinance will not constitute an unnecessary hardship if applied to the property for which variance is sought.

*No unnecessary hardship was identified to warrant grant of a variance.*

5. The approval does interfere substantially with the Comprehensive Plan.

*The Comprehensive Plan recommends use of the property for parks, open space, and conservation.*

## Property Details

**Location:** East of and adjoining 7392 W 500 N, Fairland, Sugar Creek Township.

**Property Size:** 2.12-acres.

**Current Land Use:** Vacant.

### Zoning Classification:

R1 (Single-Family Residential)

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

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

# Staff Report

**Case Number:** BZA 23-15

**Case Name:** Lester Smith – Use Variance

## Request

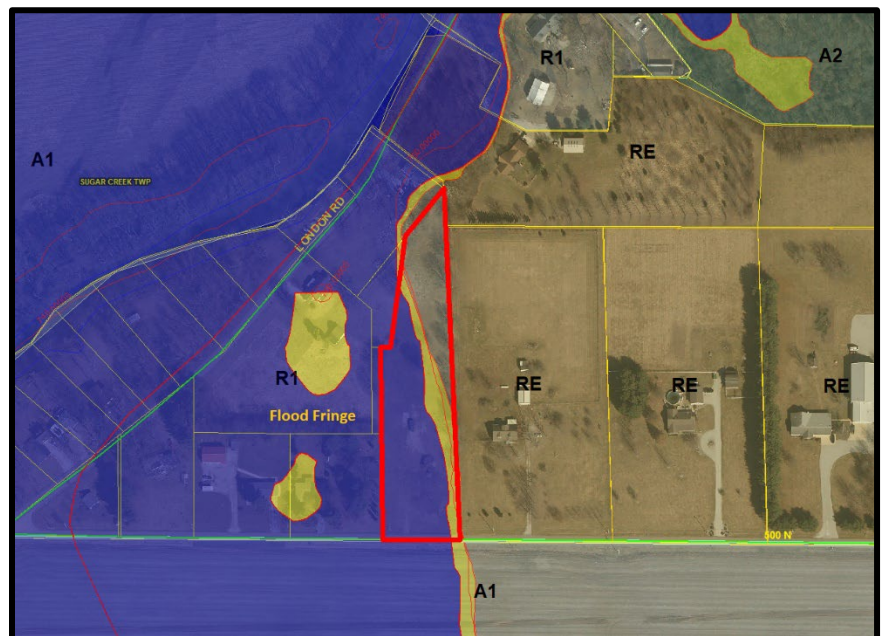
**Variance of Use** to allow for construction of an accessory building for non-commercial storage as primary use of property in the R1 (Single-Family Residential) District.

## Code Requirement

### UDO Section 2.13 R1 District Intent, Permitted Uses, and Special Exception Uses

**Purpose of Requirement:** Prohibiting construction of storage structures without a single-family home protects the character of residential neighborhoods and discourages use of a structure for activities that would generally pose a nuisance to a home located on the lot.

## Property Map



## Case Description

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- The petitioner intends to sell the property to an individual who intends to build an accessory structure on the property to use for storage.
- Most of the property lies within Federal Emergency Management Agency (FEMA) Special Flood Hazard Area Zone AE (map # 18145C0085C, effective on 11/05/2014) Flood Fringe. Approximately ½-acre lies outside the floodplain at the northeast corner of the property.
- Use variances expire at the time the property changes ownership. Therefore, the variance would only apply to the initial purchaser of the property and any future owner would need to request that the BZA renew the variance.

## 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 accessory structure would require a building permit and the structure must comply with all building codes before passing a final inspection. Use of the structure for storage of personal items would not impact the public. Construction of the structure outside the floodplain would not contribute to the cumulative effect of obstructions in the floodplain, and therefore would not contribute to increased flood heights and velocities throughout the community.

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

Staff Analysis: If constructed outside the floodplain, the structure would sit over 200 feet from the road and behind all residences located on adjacent properties, and therefore would not impact the character of the area. Limiting the size of the structure would protect the character of the neighborhood and discourage use of the structure for higher-intensity activities that would generally pose a nuisance to homes located on adjacent lots.

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

Staff Analysis: The small ½-acre portion of the property located outside the floodplain would likely not accommodate a standard size house, septic system, and accessory structure.

**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: Development of the property for a residential homesite as permitted by ordinance would likely result in development in the floodplain due to the limited area available outside the floodplain.

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

Staff Analysis: Approval of the variance with stipulations prohibiting development in the floodplain would result in preservation of the area of the property included in the floodplain as recommended by the Comprehensive Plan.

## Staff Recommendation

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**APPROVAL** primarily because the small ½-acre portion of the property located outside of the floodplain would likely not accommodate a standard size house, septic system, and accessory structure. However, the structure should be limited in size to discourage use of the structure for higher-intensity activities that would generally pose a nuisance to homes located on adjacent lots.

### Recommended Stipulations:

- 1. The structure shall not exceed 840 sq. ft. \***
- 2. The structure shall not be constructed in the Special Flood Hazard Area.**

\*Ordinance would permit an accessory structure not exceeding 50% of the footprint of the house if the property included a house. To determine the maximum size, Staff used the size of the two adjacent homes to the west also located in the R1 District.

### *Applicant/Owner Information*

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Applicant:	Lester Smith 7094 W 500 N Fairland, IN 46126	Owner:	Lester & Tammara Smith
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## Property Details

**Location:** 1796 W Washington Ave,  
Shelbyville, Addison Township.

**Property Size:** 22.01-acres.

**Current Land Use:** Commerical.

### Zoning Classification:

I2 (High-Intensity Industrial)

*Intent: This district is established for high intensity industrial uses and heavy manufacturing facilities.*

*Development Standards: Enact 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 the potential for light pollution, noise pollution, loading berth placement, pedestrian safety, and vehicular safety.*

### Future Land Use per Comp Plan

Shelbyville Incorporated Planning Area  
Single-Family Residential

*Single-family residential can indicate a few varieties of densities including high, medium, and low densities.*

Shelbyville Incorporated Planning Area  
Conservation

*Areas of conservation identified in the Future Land Use Map are primarily located within the floodway and natural watershed areas. These areas should be protected from development. These areas could also be utilized as lineal parks to connect the built environment with nature. These areas also serve as educational catalysts to engage people with the natural environment.*

### Surrounding Development

	Zoning	Land Use
North	A1	Woodland
South	A1 / RE	Estate Residential
East	A1	Woodland
West	A1	Woodland

# Staff Report

**Case Number:** BZA 23-04

**Case Name:** Douglas C Hunt – Use & Development  
Standards Variances

## Request

**Variance of Use** to allow for an automobile-oriented business (automobile salvage and repair) in the I2 (High Intensity Industrial) District.

### Variations of Development Standards to allow:

1. Use of the existing gravel driveway (hard surface required);
2. Use of existing gravel parking and maneuvering areas (hard surface required);
3. Lack of dedicated ADA parking spaces;
4. Use of existing parking area encroaching more than 50% into the front yard setback;
5. Unscreened outdoor storage of vehicles and equipment (6-foot-tall privacy fence and landscaping between outdoor storage area and street required).

## Code Requirement

**UDO Section 2.35 – I2 District Intent, Permitted Uses, and Special Exception Uses**

**UDO Section 5.20 C – Materials:** All driveways shall consist of asphalt, concrete or other non-porous material approved by the Zoning Administrator.

**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 5.60 F 1 – Applicable Codes:** Accessible parking spaces shall be provided per the specifications of the Americans with Disabilities Act (ADA), the Fair Housing Act (FHA), and the Indiana Building Code (IBC).

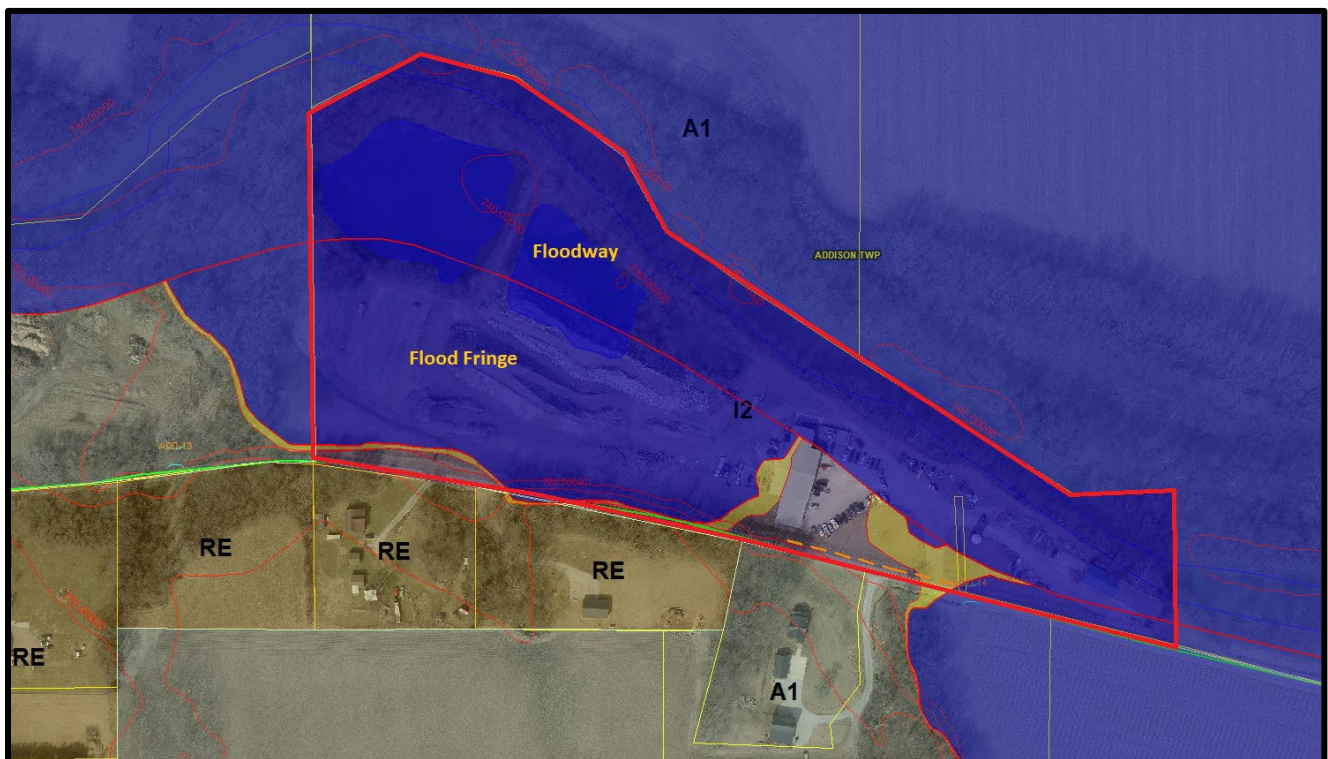
**UDO Section 5.63 A 1 a** – *Front, Side, and Rear: Parking lots may project into the front, side, and rear yard setback by fifty percent (50%) of the minimum front, side, or rear yard setback.*

**UDO Section 5.59 A** – *Industrial Outdoor Storage: When adjacent to a public street, outdoor storage of vehicles, equipment, product, supplies, materials, waste or scrap, pallets, and the like shall be effectively screened on all sides with a minimum six (6) foot privacy or security fence, at least ten (10) feet from the property line. The ten (10) foot area immediately outside the fence shall be landscaped with trees (one per fifty (50) lineal feet of fence) and shrubs (one per thirty (30) lineal feet of fence).*

**Purpose of Requirements:**

- Paved commercial driveways prevent migration of dust onto the public road from use of a gravel driveway by multiple vehicles.
- 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.
- Standards for parking for the disabled ensures that parking lots for commercial development comply with the Americans with Disabilities Act and state codes.
- 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.
- Screening of outdoor storage areas protects the aesthetic quality of the area.

**Property Map**





2023 Google Aerial

## Case Description

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- The petitioner currently leases the 10,244 sq. ft. commercial building located on the property to a company that repairs and rebuilds vehicles intended for sale at an off-site car lot.
- The company stores vehicles outdoors in the gravel area surrounding the building. During a site visit, Staff counted approximately forty vehicles on-site.
- The UDO only permits automobile-oriented uses in the C2 (Highway Commercial) District and does not permit outdoor storage related to automobile-oriented uses. However, automobile-oriented uses pose less aesthetic, noise, and environmental impacts to adjacent properties and the community than most uses permitted in the I2 District.
- The company does not intend to make any improvements to the site. 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. The site does not currently comply with all development standards of the I2 District; therefore, the petitioner must obtain applicable development standards variances to use the site in its current condition.
- The portion of the property used for outdoor storage of vehicles lies within the Federal Emergency Management Agency (FEMA) Special Flood Hazard Area Zone AE (map # 18145C0118C effective on 11/05/2014) Floodway & Flood Fringe. State Code and County Ordinance do not prohibit storage of vehicles in the floodplain.



- Historically, the property has included high-intensity industrial uses such as waste processing and landfill.
- The property lies within the City of Shelbyville’s incorporated planning area and the Shelbyville Planning Department has reviewed the variance requests (see attached email). City Staff generally does not object to the variance requests, however, recommends screening and/or liming the size of the outdoor storage area due to the City Comprehensive Plan recommendation of residential development for the surrounding area.
- Use variances expire at the time the property changes ownership.

## Staff Analysis of Findings of Fact

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### 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: Use of the property for an automobile-oriented business would pose less of an impact to the public than most uses permitted in the I2 District or the historical use 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: Use of the property for an automobile-oriented business would pose less of an impact to surrounding properties than most uses permitted in the I2 District or the historical use of the property.

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

Staff Analysis: The property has historically accommodated more intense uses than automobile salvage and repair.

**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 less intense use of the property than most uses permitted in the I2 District or the historical use of the property.

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

Staff Analysis: The City of Shelbyville generally does not object to the variance, however, recommends screening and/or liming the size of the outdoor storage area due to the City Comprehensive Plan recommendation of residential development for the surrounding area.

### Development Standards Variances

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

Staff Analysis: The property has historically accommodated more intense uses in its current condition. However, limiting the number of vehicles stored outdoors would ensure that the aesthetics of the site and potential environmental impacts associated with vehicles in disrepair do not exceed aesthetic and environmental impacts associated with historical use 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: The property has historically accommodated more intense uses in its current condition. However, limiting the number of vehicles stored outdoors would ensure that the aesthetics of the site and potential environmental impacts associated with vehicles in disrepair do not exceed aesthetic and environmental impacts associated with historical use 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 more intense use of the property than historical uses that the property has accommodated in its current condition.

### Staff Recommendation

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**APPROVAL** because the I2 District allows more intense uses than automobile salvage and repair, and the property has historically accommodated more intense uses in its current condition. However, limiting the number of vehicles stored outdoors would ensure that the aesthetics of the site and potential environmental impacts associated with vehicles in disrepair do not exceed aesthetic and environmental impacts associated with historical use of the property.

**Recommended Stipulation:** No more than forty (40) vehicles (including inoperable, operable, employee, visitor, and personal vehicles) shall be present outdoors on site at any one time. The definition of vehicle shall be any passenger vehicle, truck, tractor, tractor-trailer, truck-trailer, trailer, boat, recreational vehicle, semitrailer, or any other vehicle propelled or drawn by mechanical power.

### Applicant/Owner Information

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Applicant:	Douglas L Hunt 2987 S 150 E Shelbyville, IN 46176	Owner:	Hunt & Hunt LLC PO Box 66 Shelbyville, IN 46176
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**From:** [Adam Rude](#)  
**To:** [Desiree Calderella](#)  
**Cc:** [Allan Henderson](#)  
**Subject:** Re: 1797 W Washington Ave. - Recommendation in Incorporated Planning Area  
**Date:** Monday, May 1, 2023 8:57:22 AM

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Hey Desiree! Sorry, I started to type a response last week and then got distracted and forgot to come back to this.

The property has historically been Industrial, so the use doesn't give us too much concern, and the floodplain will help limit the scale of the use from expanding too far across the property. The one area where we could have some concern is the screening requirements being completely waived. The comp plan show a future section of Tom Hession/Progress Pkwy crossing the river in this area, and the south side of the river is being shown as Single Family Residential, while there are few neighbors to the south right now, I think that could change as the City continues to develop west and eventually (maybe in my lifetime) crosses the river with this road. If the board moves forward with granting some type of variance on this standard, maybe they could just grant a partial relief, and/or limit the outdoor storage area's overall size. The rest of the Development Standards Variances seem reasonable and I don't think we would have much concern with these approvals.

Thanks and sorry again for the delay,  
Adam



**Adam Rude, AICP**  
**Director, Planning and Building Department**

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A: 44 W. Washington Street, Shelbyville, IN, 46176

On Mon, May 1, 2023 at 8:47 AM Desiree Calderella <[dcalderella@co.shelby.in.us](mailto:dcalderella@co.shelby.in.us)> wrote:

I really need an answer on this today as I will be on vacation the rest of the week. Thanks!

*Desiree Calderella, AICP*

**Planning Director**

Shelby County Plan Commission / Building Inspector

25 W Polk St. Room 201, 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: Auto Repair and Rebuild

2. Days & Hours of Operation: 7:00 AM - 7:00 PM

3. Maximum Number of Customers per Day/Week/Month: 10

4. Type and Frequency of Deliveries: Daily

5. Description of any Outdoor Storage: Cars awaiting Repair

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

7. Description of Waste Disposal: N/A

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

**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.

*No*

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.

*Will not Effect other Property*

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

*No*

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.

*No*

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

*No*



## Property Details

**Location:** 8700 S SR 9, Flat Rock, Washington Township.

**Property Size:** 2.5-acres.

**Current Land Use:** Religious Organization.

### Zoning Classification:

C1 (Neighborhood Commercial)

*Intent:* This district is established for the provision of small scale retail goods and services required for regular or daily convenience of nearby neighborhoods and agricultural areas.

*Development Standards:* Require quality development standards to minimize impacts on adjacent residential properties while encouraging economic vitality.

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

### 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	A2/RE	Woodland / Residential Estate / Multifamily Res.
East	RE	Residential Estate
West	A1	Cropland

# Staff Report

**Case Number:** BZA 23-13

**Case Name:** Religious Reconstruction Organization, Inc. – Development Standards Variance

## Request

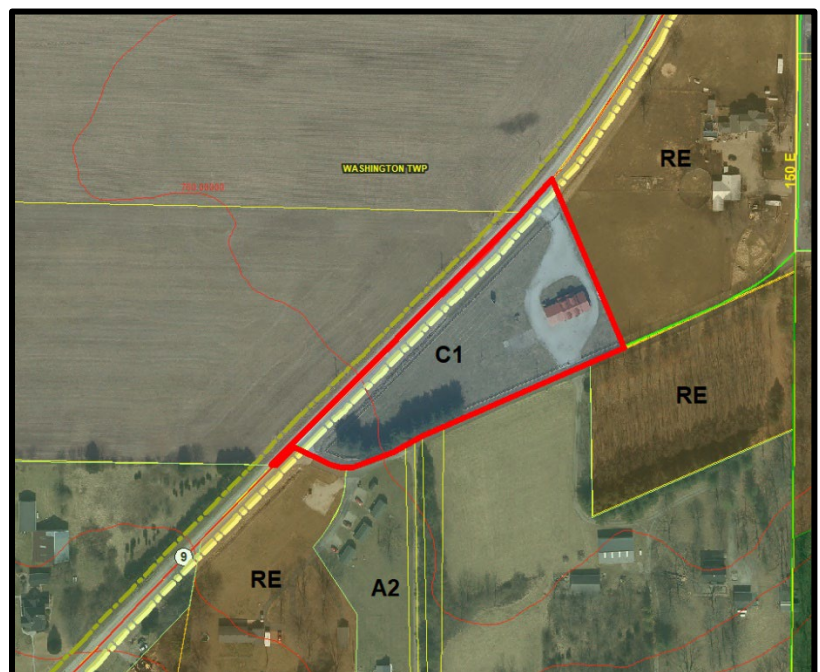
**Variance of Development Standards** to allow intermittent use of 8' x 14' signage attached to a fence.

## Code Requirement

**UDO Section 5.73 D 3 – Prohibited Locations:** Signs shall not be installed at any of the following locations: Poles: On any traffic control sign, street construction sign, fence, utility pole, street sign, tree, or other natural object.

**Purpose of Requirements:** Sign standards provide a balanced system of signage to facilitate communication between people and their environment and to avoid visual clutter that is potentially harmful to traffic safety, property values, community appearance, and the economic vitality of Shelby County.

## Property Map



## Case Description

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- The petitioner has installed several 8' x 14' signs on a wooden fence fronting upon SR 9. The UDO only permits signage installed on buildings, ground signs, and miscellaneous small yard signs.
- The fence also includes decorative elements resembling building facades. These elements do not direct attention to a particular object, product, place, activity, person, institution, organization, or business, and therefore do not qualify as signs under the definition of a sign included in the UDO.
- The wooden fence replaced an 8-foot-tall chain link fence destroyed by tornado. The wooden fence and decorative elements within the fence comply with the provisions for fences included in the UDO.
- The petitioner has also obtained a permit to replace a 480 sq. ft. ground sign with a 160 sq. ft. ground sign also destroyed by tornado. Per the UDO, the new ground sign may exceed the maximum 40 sq. ft. sign area requirement because it does not exceed the size of the previously destroyed sign.
- In November of 2022, Staff received a complaint regarding placement of signs on the fence and issued a violation letter to the petitioner. The petitioner promptly contacted Staff regarding options for corrective action. Due to timing constraints borne by both Staff and the petitioner, the case was not placed on the BZA agenda until May of 2023.
- Federal case law prohibits the Board from considering the purpose or message included on signs when making decisions. The Board should limit their consideration to the visual impacts of 8' x 14' signage placed on a fence, regardless of sign message.

## 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 excessive signage results in visual clutter potentially harmful to traffic safety, property values, community appearance, and the economic vitality of Shelby County.

**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 excessive signage results in visual clutter potentially harmful to surrounding property values and community appearance.

**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 UDO permits signage on the building and a ground sign exceeding the current maximum sign area requirement that would adequately identify the premises. Therefore, no practical difficulty exists which warrants allowing more signage on the property than on other commercial properties throughout the County.

## Staff Recommendation

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Staff recommends **DENIAL** because the UDO permits signage on the building and a ground sign exceeding the current maximum sign area requirement that would adequately identify the premises. The excessive signage results in visual clutter impacting the community.

### *Applicant/Owner Information*

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Applicant:	John Wilson 201 S Home Ave. Franklin, IN 46131	Owner:	Religious Reconstruction Organization, Inc. 98 W Jefferson St. Franklin, IN 46131
Attorney:	Dustin Huddleston 98 W Jefferson St. Franklin, IN 46131		

### Example of Existing Fence Sign



Staff Photograph – April, 2023

**DEVELOPMENT STANDARDS VARIANCE  
FINDINGS OF FACT**

Applicant: Religious Reconstruction Organization

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

Location: 8700 S. STATE Road 9, Flat Rock Ill 47234

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.

Replace previously oversized 20' x 30' sign with  
Intermittent use of 8' x 4' signage attached to  
existing fence. Signage designed to not block  
site lines & allow for "see-through" sight access  
also designed to be tornado resistant

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.

Signage designed to be artistic in nature,  
non-obtrusive & match existing western-theme  
fencing

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.

Current zoning does not allow fence-mounted  
signage, impacting commercial use of property.  
Variance designed to augment existing fencing

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.)



## Property Details

**Location:** 797 W Brookville Rd,  
Fountaintown, Van Buren Township.

**Property Size:** 4.84-acres.

**Current Land Use:** Church.

### Zoning Classification:

IS (Institutional)

*Intent: This district is established for institutional and municipal owned lands for public purpose and use.*

*Development Standards: Require quality time, place, and manner development standards to minimize impacts on adjacent residential properties while serving the needs of the overall community.*

### Future Land Use per Comp Plan

Commerical

*The purpose of this category is to provide a full range of commercial, retail, office and service uses for residents, businesses, and visitors. This category includes commercial activities with direct contact with customers ranging from neighborhood convenience stores to regionally oriented specialty stores.*

### Surrounding Development

	Zoning	Land Use
North	A2	Cropland
South	A1	Cropland
East	R1 / A2	Single-Family Res.
West	A1	Cropland

# Staff Report

**Case Number:** BZA 23-16

**Case Name:** Fountaintown Christian Church –  
Development Standards Variances

## Request

**Variances of Development Standards** to allow for a ground sign having:

1. an area of approximately 144 sq. ft. per side (maximum of 40 sq. ft. per side permitted);
2. a height of 15.5-feet (maximum 6-foot height permitted);
3. animated components (not permitted).

## Code Requirement

**UDO Section 5.74 B 4 a** – Ground signs shall not exceed forty (40) square feet in area per side.

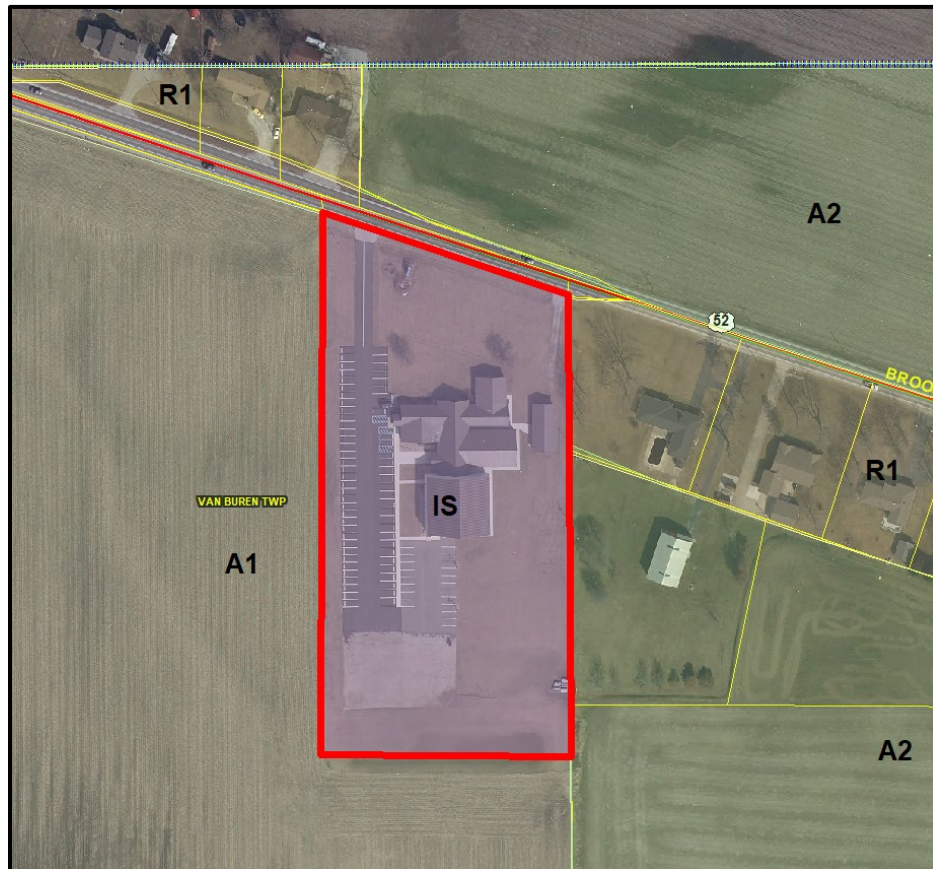
**UDO Section 5.74 B 4 b** – Ground signs shall not exceed six (6) feet in height.

**UDO Section 5.73 E 1 c** – Prohibited Signs: The signs listed in this section are prohibited - Animated Signs: Signs that gain attention through animation, including: LED or similar sign boards, except when LED elements are used for static messages.

**Purpose of Requirements:** Sign standards provide a balanced system of signage to facilitate communication between people and their environment and to avoid visual clutter that is potentially harmful to traffic safety, property values, community appearance, and the economic vitality of Shelby County.

## Property Map

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## Case Description

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- The church intends to replace an existing ground sign with the proposed sign. The existing ground sign has an area of approximately 90 sq. ft., a height of approximately 9-feet, and no animated components.
- The proposed sign would consist of a brick base, permanent message area, and electronic message area that would comprise approximately 1/3<sup>rd</sup> of the sign's area.
- Most signs in the area appear smaller than the existing sign on the property.
- The County has relatively outdated and restrictive sign standards. Staff evaluated sign standards applicable to properties in institutional zoning districts for the City of Shelbyville, Hancock County, and Marion County. None of these jurisdictions permit signs over 64 sq. ft. in area and 8 feet in height in Institutional Districts.

## 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 existing sign adequacy identifies the premisis, and a larger sign would conflict with the size of most other signs in the area and size limitations that apply to signs in surrounding jurisdictions; therefore, a larger sign would result in visual clutter potentially harmful to community appearance and the economic vitality of Shelby County.

A digital display would allow the petitioner to display a variety of messages to the traveling public. Implementation of diming features relevant to ambient conditions and limiting light cast at the property line would prevent the casting of excessive light onto the public road. Prohibiting motion pictures would limit distraction to motorists.

**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 existing sign adequacy identifies the premisis, and a larger sign would conflict with the size of most other signs in the area and size limitations that apply to signs in surrounding jurisdictions; therefore, a larger sign would result in visual clutter potential harmful to surrounding property values and community appearance.

A digital display would allow the petitioner to display a variety of messages to the traveling public. Implementation of diming features relevant to ambient conditions, limiting light cast at the property line, and non-operation of the EMC portion of the sign during nighttime hours would mitigate light nuisance to adjacent residential properties. Prohibiting motion pictures would limit visual nuisance to nearby 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 existing sign adequately identifies the premisis, however a digital display would allow the petitioner to display a variety of messages to the traveling public.

## Staff Recommendation

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Staff recommends **APPROVAL** primarily because a digital display with limited light and motion capabilities would allow the petitioner to display a variety of messages to the traveling public without posing a distraction to motorists or nuisance to nearby residential properties. However, the existing sign adequacy identifies the premisis, and a larger sign would conflict with the size of most other signs in the area and size limitations that apply to signs in surrounding jurisdictions.

**Recommended Stipulations:**

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

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

*Applicant/Owner Information*

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Applicant: Autum Wimmer, SignCraft Industries  
8816 Corporation Drive  
Indianapolis, IN 46256

Owner: Fountaintown Christian Church  
797 W Brookville Rd.  
Fountaintown, IN 46130



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

Applicant: Autum Wimmer

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

Location: 797 W Brookville Rd Fountaintown, IN 46130

The Shelby County Board of Zoning Appeals must determine that the following criteria have been met in order to approve an application for a 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. There shall be no blinking, scrolling, flashing, or video type message on the proposed digital display message center.

All messages in the digital display will remain static for at least 30 seconds.

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 digital display sign shall be operated in compliance with the digital display regulations.

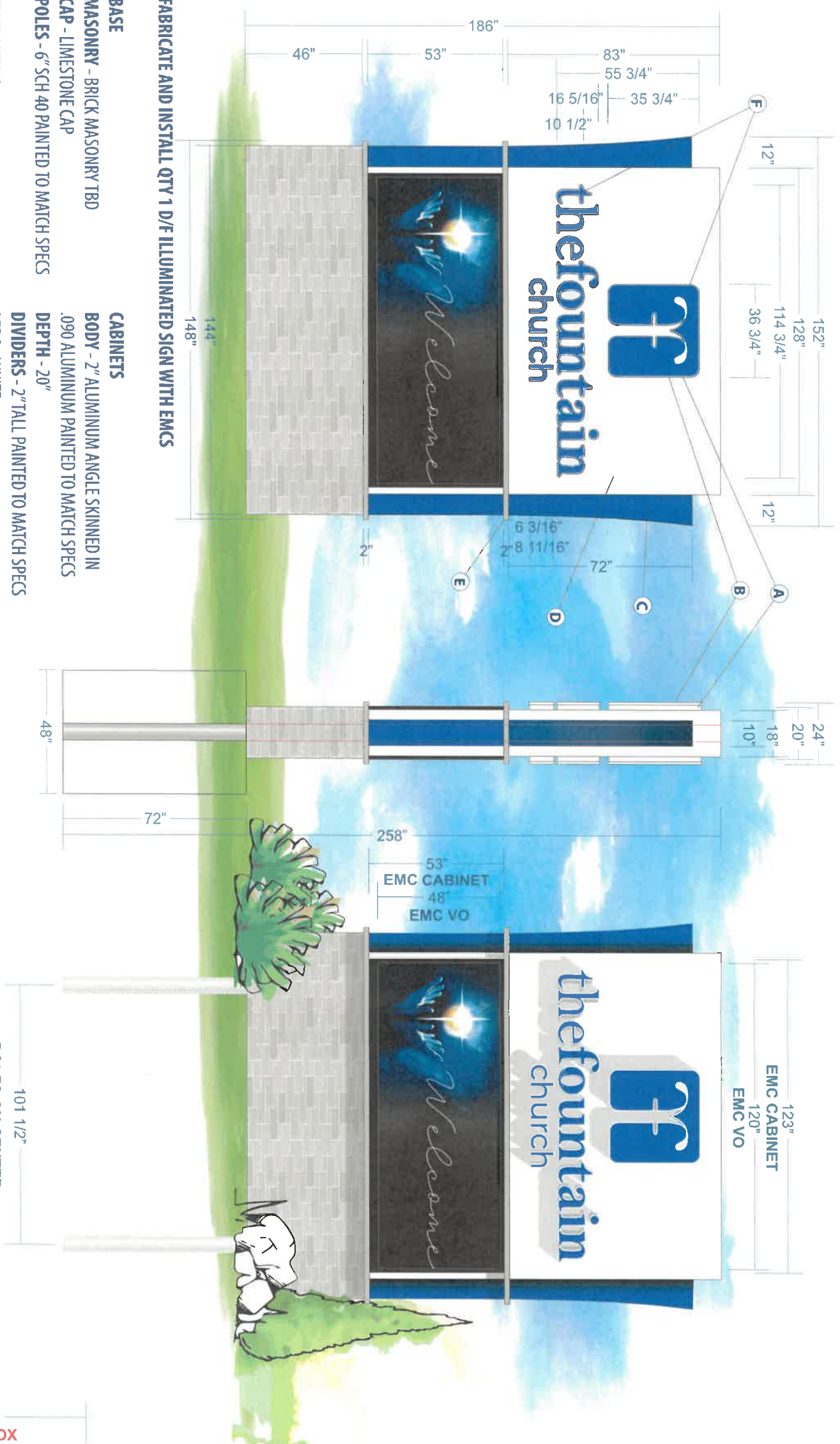
3. **Practical Difficulty:** The strict application of the terms of the Shelby County Zoning Ordinance will result in a practical difficulty in the use of the property.  
No the use of the property will remain the same

**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.)



FABRICATE AND INSTALL QTY 1 D/F ILLUMINATED SIGN WITH EMC'S

- BASE**
- MASONRY - BRICK MASONRY TBD
- CAP - LIMESTONE CAP
- POLES - 6" SCH 40 PAINTED TO MATCH SPECS
- EMCS (QTY 2)
- RESOLUTION - 10MM
- COLOR - FULL COLOR
- DEPTH - 5"
- SIDE ACCENTS**
- BODY - 2" ALUMINUM ANGLE SKINNED IN .090 ALUMINUM PAINTED TO MATCH SPECS
- CABINETS**
- BODY - 2" ALUMINUM ANGLE SKINNED IN .090 ALUMINUM PAINTED TO MATCH SPECS
- DEPTH - 20"
- DIVIDERS - 2" TALL PAINTED TO MATCH SPECS
- LEDS - WHITE
- CHANNEL LETTERS (LOGO & "THE FOUNTAIN CHURCH")**
- FACES - 3/16" 7328 WHITE ACRYLIC PRINTED TO MATCH SPECS
- RETURNS - 3" TO MATCH SPECS
- TRIM CAPS - 1" TO MATCH SPECS
- BACKS - 3MM WHITE DIBOND
- LEDS - WHITE



POLES ON CENTER



BA May 9, 2023  
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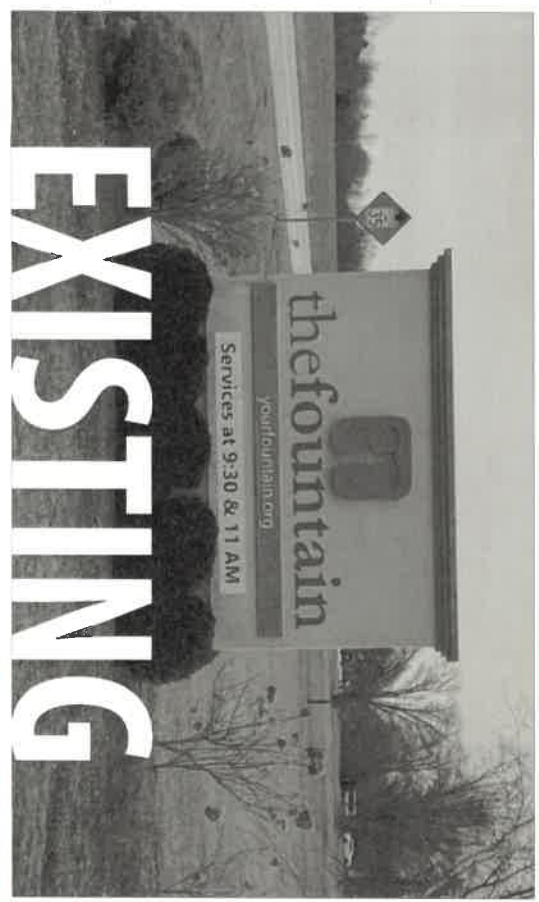


PHOTO SCALE: 3/16" = 1'-0"

- COLOR SPECIFICATIONS:**
- A WHITE RETURNS
  - B WHITE TRIM CAPS
  - C PMS 2728 C BLUE
  - D MP WHITE
  - E T/M LIMESTONE
  - F DIG. PRINT PMS 2728 C BLUE (FB 1ST)

**NOTE:** THERE WILL BE COLOR VARIATIONS FROM THIS PRINTED DRAWING TO THE FINAL PRODUCT. COLORS SPECIFIED WILL ALWAYS BE MATCHED AS CLOSELY AS POSSIBLE. RENDERING IS BASED ON ESTIMATED DIMENSIONS. A FINAL SURVEY MAY ALTER ILLUSTRATED REPRESENTATION AND PLACEMENT.

**IF ILLUMINATED:** WILL BE WIRED TO 120 VOLT UNLESS OTHERWISE SPECIFIED. THIS SIGN IS INTENDED TO BE INSTALLED IN ACCORDANCE WITH THE REQUIREMENTS OF ARTICLE 600 OF THE NATIONAL ELECTRICAL CODE AND/OR OTHER APPLICABLE LOCAL CODES. THIS INCLUDES PROPER GROUNDING AND BONDING OF THE SIGN.

<b>SCI REP:</b>	TF	<b>DESIGNER:</b>	NK	<b>PERMIT INFORMATION:</b>	N/A
<b>DATE:</b>	02/27/2023	<b>REVISION DATE:</b>		<b>FINAL DATE &amp; BY:</b>	
<b>SHEET #:</b>	3/6				



# Zoning Violation

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Case Number: V22-19  
Property Owner: H Farms LLC  
Location: 5590 W 1100 N, Fountaintown, Moral Township

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## Suspected Violation

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**Storage of commercial merchandise (boats) in the RE (Residential Estate District) and A4 (Agricultural Commercial) District.**

Section 2.09 – A4 District Intent, Permitted Uses, and Special Exception Uses  
Section 2.11 – RE District Intent, Permitted Uses, and Special Exception Uses

## Evidence of Violation

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Staff observed multiple boats stored on the property over a six-month timeframe. Staff conducted an internet search, the family who owns the property also owns a boat dealership in Indianapolis.



March 3, 2023



April 25, 2023

## Case History

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**November 17, 2022** – Staff received a complaint regarding use of the property for storage of commercial boats and sent the property owner a violation letter by certified mail. Prior to sending the violation letter, the one of the property owners contacted the office to obtain an unrelated electrical permit. At that time Staff informed the property owner of the pending violation and the property owner indicated that they would seek a variance.

**December 6, 2022** - USPS tracking listed the letter as delivered on December 6, 2022. The property owner did not contact Staff.

**December 29, 2022** - Staff received another complaint regarding continued storage of boats on the property and observed the boats on the property during a site visit. Staff sent the property owner a second violation letter which required removal of the boats or filing of a variance petition by January 24, 2023.

**January 17, 2023** - USPS tracking listed the second violation letter as picked up at the post office on January 17, 2023. The property owner did not contact Staff.

**March 3, 2023** – Staff observed the boats on the property during a site visit.

**March 20, 2023** - Staff sent the property owner a third violation letter informing the property owner of a scheduled hearing of the violation case before the BZA at their April meeting due to failure to correct the violation of file a variance. The April meeting was canceled, and the case automatically continued to the May BZA meeting.

**April 3, 2023** - USPS tracking listed the second violation letter as picked up at the post office on April 3, 2023. The property owner did not contact Staff.

**April 25, 2023** – Staff observed the boats on the property during a site visit. It appeared that the property owner had begun to move the boats toward the rear of the property.

**May 1, 2023** – Staff called the number the property owner has listed on an old building permit application to inform the property owner of the pending BZA hearing. The person who answered explained that they had helped construct the building but does not personally store boats on the property. They did not offer contact information for another individual.

## BZA Decision

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Staff requests that the BZA review the evidence and determine if the property violates the provisions of the Unified Development Ordinance. If the Board determines a violation exists, Staff requests that the Board provide direction to Staff regarding enforcement action.

# Shelby County Plan Commission

25 West Polk Street, Room 201

Shelbyville, Indiana 46176

(317) 392-6338

Planning Director

Desiree Calderella, AICP

## NOTICE OF ZONING VIOLATION

via certified mail # 7005 1160 0000 5809 2189

V22-19

November 17, 2022

H Farms LLC  
3395 S Overlook Pass  
New Palestine, IN 46163

The Shelby County Plan Commission observed a violation of the Shelby County Unified Development Ordinance on property you own located at 5590 W 1100 N, Fountaintown. With this letter, the Shelby County Plan Commission, which is charged with enforcing the ordinance, requests that you correct the violation. The specific terms of the violation are detailed here:

1. **Location of violation:** 5590 W 1100 N, Fountaintown
2. **Specific description of violation:**
  - a. Storage of commercial merchandise (boats) in the RE (Residential Estate District) and A4 (Agricultural Commercial) District.
3. **Specific portion of zoning ordinance violated:**
  - a. Section 2.09 - A4 District Intent, Permitted Uses, and Special Exception Uses
  - b. Section 2.11 - RE District Intent, Permitted Uses, and Special Exception Uses
4. **Options for corrective action:**
  - a. Remove boats from property. A land use petition seeking to legally establish this use of the property may be filed after correction of the violation.
  - b. Appeal the issuance of this violation to a public hearing of the Shelby County Board of Zoning Appeals.

Corrective action listed above shall be taken by **December 8, 2022**. Failure to take corrective action by December 8, 2022 will result in a **fine of \$50**. If corrective action is not taken by December 8, 2022, the Plan Commission will issue ongoing additional **finest each day up to \$7,500**, which if unpaid will attach as a lien to your property. The Plan Commission may employ any other legal remedy permitted by the Unified Development Ordinance.

If merited, I will work with you on a short extension to bring the property into compliance. If you wish to discuss any other aspect of your case, please call me at (317) 392-6338 or email me at [dcalderella@co.shelby.in.us](mailto:dcalderella@co.shelby.in.us).

Sincerely,



Desiree Calderella, AICP  
Planning Director  
Shelby County Plan Commission

# Bylaws & Rules of Procedure

## Shelby County Board of Zoning Appeals

### ARTICLE ONE NAME AND RULES

- 101 NAME: The legal name of the Board shall be the “Shelby County Board of Zoning Appeals”.
- 102 RULES OF PROCEDURE: Procedures provided by statute, county ordinances, the Unified Development Ordinance, or these by-laws, shall govern the conduct of the Board meetings.
- 103 MEETING VERSUS HEARING: Within these Rules of Procedure, the word ‘meeting’ refers to all business conducted by the Board and the word ‘hearing’ refers to each individual petition.

### ARTICLE TWO MEMBERSHIP, OFFICERS, AND STAFF

- 201 QUALIFICATION OF MEMBERS:
- a. No members of a board of zoning appeals may hold an elected office (as defined in IC 3-5-2-17); or any other appointed office, except as permitted by section IC 36-7-4-902, in municipal, county, or state government.
  - b. Members must be a resident of the jurisdictional area of the board or the member must be a resident of a municipality within the county and also an owner of real property located in whole or in part in the jurisdictional area of the board. However, the majority of members must be residents of the jurisdictional area of the board
  - c. Member Appointments
    - i. Three citizen members appointed by the County Commissioners, of whom one must be a member of the Plan Commission and two must *not* be members of the plan commission.
    - ii. One citizen member appointed by the County Council, who must *not* be a member of the Plan Commission.
    - iii. One member appointed by the Plan Commission from the Plan Commission's membership, who must be a county agricultural agent or a

citizen member of the Plan Commission other than the member appointed under section 201 c i.

- iv. The County Commissioners and County Council may each appoint an alternate member. The alternate member may serve in the place of the regular member(s) appointed by the respective body if the regular member is unavailable to participate in a hearing for any reason.

202 TERM OF MEMBERSHIP: Each appointment is for a four-year term of membership. A member is eligible for reappointment. If the term of an appointed member of the Board expires and the appointing authority does not make an appointment to fill the vacancy, the member may continue to serve until the member's successor is appointed. If a vacancy occurs among the members of the Board, the appointing authority shall appoint a member for the unexpired term of the vacating member.

203 REMOVAL OF MEMBERS: The appointing authority may remove a member from the Board of Zoning Appeals for cause, if the member misses six (6) or more regular meetings in a calendar year of the Board, or if the member misses three (3) consecutive regular meetings of the Board. The appointing authority must mail notice of the removal, along with written reasons, to the member at his/her residence address. A member who is removed may appeal the removal within thirty days of receiving notice to circuit or superior court of the County.

204 ELECTION OF OFFICERS: At its first regular meeting in each year, the Board shall elect from its members a Chairman, Vice-Chairman and Secretary.

205 DUTIES OF THE CHAIRMAN AND VICE CHAIRMAN: The Chairman shall preside over all Board meetings, determine points of order and procedure, and sign all official documents. The Vice-Chairman shall have authority to act as Chairman of the Board during the absence or disability of the Chairman and shall automatically succeed to the office of Chairman upon the resignation or death of the Chairman.

201 DUTIES OF THE PLANNING DIRECTOR:

- a. The Director shall conduct roll call, read each petition into the record, and provide technical assistant to the Board.
- b. The Director shall be responsible for recording minutes of all Board proceedings.
- c. The Director shall process applications for petitions, shall be responsible for the custody and preservation of the official file for each petition, shall establish the petition docket, and shall write the public notice for each petition.

- d. The Director shall prepare a staff report for each petition to be brought before the Board and an agenda for each meeting.

### **ARTICLE THREE MEETINGS**

- 301 MEETING CALENDAR: The Plan Commission Director shall prepare an annual meeting calendar including the scheduled date for each hearing, filing deadline, and deadline to provide notice. The filing deadline shall be at least twenty-eight (28) days prior to the meeting at which a petition will be considered. The BZA shall adopt the meeting calendar.
- 302 QUORUM: The presence of three members of the Board shall constitute a quorum. An appointed alternate member may serve in order to form a quorum. Five members are also required for quorum in case of a vacancy.
- 303 DISPENSION OF MEETINGS: Whenever there is a lack of business or whenever a quorum will not be available, the Chairman or Plan Commission Director may dispense with a regular meeting by giving written notice to any petitioner and written or oral notice to all members.
- 304 SPECIAL MEETINGS: Special meetings of the Board may be called by the President or by two members of the Board giving written notice to all members at least three days prior to the meeting and provided that in all cases where notice by publication or notice to interested parties is required, such notice shall be in accordance with IC 5-3-1-2 and IC 5-3-1-4.
- 305 OFFICIAL ACTION: No action of the Board shall be official unless it is authorized at a regular or special meeting by a majority of the entire membership of the Board.
- 306 PARTICIPATION BY ELECTRONIC MEANS OF COMMUNICATION: Board members may participate in meetings and authorize official action by electronic mean of communication as specified in the most current resolution of the Shelby County Board of Zoning Appeals establishing the policy by which members of the Plan Commission may participate by electronic means of communication.

### **ARTICLE FOUR PROCEDURE FOR PETITION TO THE BOARD**

- 401 APPLICATION: Any petition to the Board of Zoning Appeals shall be in writing on forms supplied by the Planning Director. These forms shall be executed and filed in the Office of the Plan Commission.
- 402 DOCKET: A docket shall be maintained by the Planning Director.



- 403 DATE OF HEARING: A petition, when filed, shall come up for hearing at the next regularly scheduled meeting of the Board of Zoning Appeals after the application deadline.
- 404 NOTICE OF PUBLIC HEARING:
- a. The Planning Director shall write each notice of public hearing. The notice of public hearing shall contain at least the following information: 1) the substance of the petition; 2) the address of the subject property; 3) the name of the petitioner; 4) the time and place set for the hearing; 5) a statement that any interested party may voice an opinion upon said hearing date and/or file written comments concerning the petition; 6) that the meeting may be continued from time to time.
  - b. Notification by Publication: The Planning Director shall publish in the local newspaper all public hearings in accordance with Indiana Code 5-3-1 and Indiana Code 5-3-1-4.
  - c. Notification to Interested Parties: The Plan Commission Director shall provide the mailing address of all interested parties to the petitioner prior to the notice deadline. Interested parties are defined as all property owners of record, as shown in the County Auditor's Office, of all land within six-hundred and sixty (660) feet of any property line of the petition site.
  - d. Notice must be provided a minimum of ten (10) days prior to the public hearing. The petitioner shall be responsible for providing proof of notice to the Planning Director.
  - e. Notice, on a sign having a minimum area of 18" x 27" prescribed by the Board, shall be posted on the subject property at least ten (10) days prior to the public hearing. Said notice shall be located in a place on the property visible from the public roadway along each public street frontage and shall remain posted until resolution of the petition. One sign per street frontage may be displayed for multiple petitions that apply to a single property.
  - f. All costs of notification to interested parties shall be borne by the petitioner.
- 405 REPRESENTATION: The applicant must be present at the hearing or by electronic means of communication. No Board member may represent the petitioner at any meeting or hearing.

## **ARTICLE FIVE**

### **CONDUCT & PROCEEDURE OF MEETINGS**

501 ORDER OF BUSINESS: The order of business of regular meetings shall be as follows:

- a. Roll Call
- b. Approval of Minutes
- c. Requests of Continuance and Miscellaneous Requests
- d. Public Hearings
- e. Discussion
- f. Adjournment

The order of business may be changed by the Chairman.

502 PUBLIC HEARINGS: The order and format of each public hearing shall be as follows:

- a. The Chairman shall call up for public hearing and make a determination that the petitioner is present and desires to proceed, or in the alternative, that action to continue, withdraw, dismiss, or amend may be in order. The petitioner can make a request to amend, continue, or withdraw a petition at any time during the public hearing.
- b. The Chairman shall ask the Planning Director to read the petition into the record.
- c. The petitioner(s) must appear in person or by electronic means of communication, but may be represented by agent or attorney, and shall generally have fifteen (15) minutes to present their supporting witnesses, evidence, statements, and arguments in favor of the matter being heard.
- d. Any person having interest in the petition being considered may appear in person, by electronic means of communication, by agent, or by attorney and shall generally have three (3) minutes per person to present opposing witnesses, evidence, statements, and arguments and to ask any questions about the petition. Any person interested in any petition shall have the right to enter oral and written comments concerning the petition.
- e. The Board may on its own motion grant additional time for presentation of comments on the matter being heard. It shall also be at the discretion of the Board to grant any request to significantly exceed the above stated comment periods.
- f. The petitioners(s) shall generally have fifteen (15) minutes to rebut any opposing witnesses, evidence, statements, and arguments and to answer questions posed by the public.

- g. The Chairman shall close the public comment portion of the hearing and open up the hearing for questions from the Board of the petitioner(s), remonstrator(s), Planning Director, Board Attorney, and general public.
- h. The Board may discuss the evidence presented in open meeting.
- i. Any member of the Board may call for Official Action of the Board by vote (see section 508 for procedure regarding Official Action).
- j. The Board Attorney shall read the Board's Findings of Fact into the record, unless the Chairman or Planning Director requests that the Findings of Fact be prepared after the conclusion on the Meeting.

503 TESTIMONY AND ARGUMENT: Commentary from the public shall at all times be addressed to the Board through the Chairman and shall not be permitted between opposing parties without consent of the Chairman. The Chairman shall have the authority to terminate repetitious and irrelevant testimony and shall have the authority to extend such time to interested parties as is appropriate in his/her sole judgment in the interest of affording a fair hearing to all.

504 BURDEN OF PROOF: In all petitions the burden of proof is upon the petitioner.

505 OPEN MEETING: No member of the Board shall communicate with any petitioner, advocate, opponent, any other Board member, or any other persons with interest in the petition concerning the merits of any petition pending before the Board at any time before final action thereon, except in open meeting of said Board. However, any member may discuss the merits of a petition with the Planning Director and/or Board Attorney prior to the open meeting.

506 RECUSALS: A member of the Board of Zoning Appeals must recuse himself/herself if one of the following applies:

- a. The member is biased or prejudiced or otherwise unable to be impartial; or
- b. The member has a direct or indirect financial interest in the outcome of the zoning decision.

In the event that a member disqualifies himself/herself, he/she shall do so as soon as the conflict becomes apparent, and such fact shall be entered in the minutes of the Board of Zoning Appeals. Any recused member must sit in the audience or outside the meeting room during the subject hearing. In such an instance the alternate member may participate.

- 507 ABSTENTIONS: An abstention will not count in favor or in opposition of the matter of proposition being considered.
- 508 OFFICIAL ACTION:
- a. Official Action shall be limited to one of the following options:
    - a. Vote to approve or not approve (deny).
    - b. Vote to approve with stipulations(s) or not approve (deny).
    - c. Vote to continue or to not continue.
  - b. Three members of the board must vote in the affirmative for Official Action to pass. Three members of the board must vote in the negative for Official Action to not pass. If an Official Action does not receive three votes in the affirmative or the negative, a member of the Board may call for a vote on an alternative Official Action. If Official Action is not taken, the hearing will be automatically continued to the next regularly scheduled meeting.
  - c. A petition is denied if Official Action does not result in approval, approval with stipulations, or denial by the third hearing of the petition.
  - d. The Board shall vote on Official Action by ballot.
  - e. No member of the Board shall vote on a petition if he /she is not present during the presentation of evidence during the hearing. The Secretary of the Board shall read each ballot aloud and indicate the vote of each member. The President shall declare the petition approved, approved with stipulations, denied, or continued.
- 509 FINDINGS OF FACT: All decisions of the Board with respect to appeals, special exceptions, and variances shall be supported by written findings of fact which shall be made a matter of public record in the official file in the Office of the Plan Commission. Findings of Fact for any denial shall specify the reason for non-compliance.
- 510 PREVIOUSLY DENIED PETITIONS: No petition which has been denied by the Board shall again be docket on the Board of Zoning Appeals agenda for a hearing within a period of twelve months from the date of said denial. The Planning Director shall have the authority and discretion to determine that an application containing major changes may justify re-filing within the aforementioned twelve-month period.

## ARTICLE SIX DISPOSITION OF MATTERS

- 601 IN GENERAL: Generally, the final disposition of a petition is in the form of a vote by the Board approving, approving with conditions, or denying the petition.
- 602 WITHDRAWAL BY PETITIONER:
- a. A petitioner may withdrawal their petition at any time before or during the hearing.
  - b. Withdrawals shall be given in writing prior to the meeting and may be given orally at the meeting.
  - c. Absence of the petitioner from the meeting shall be deemed a withdrawal.
  - d. No petition which has been withdrawn by the petitioner shall again be placed before the Board of Zoning Appeals for a hearing within a period of three months from the date of said withdrawal, except upon motion to permit re-docketing, adopted by a vote of the majority of the Board's members.
- 603 CONTINUANCES:
- a. A petitioner may request a continuance of their petition:
    - a. In writing prior to the meeting;
    - b. Orally prior to the public hearing portion of the meeting; or
    - c. Orally at any time during their hearing.
  - b. The Planning Director may continue any petition prior to the meeting at his/her discretion.
  - c. Any other interested party may request a continuance orally prior to the public hearing portion of the meeting. Interested parties may not request a continuance prior to the meeting.
  - d. The party requesting the continuance shall have the burden of showing good and sufficient cause.
  - e. It shall be within the discretion of the Planning Director to grant or deny requests for continuances made prior to the meeting by a petitioner.

- f. It shall be within the discretion of the Board to grant or deny requests for continuances made at a meeting.
- g. The Board may on its own motion continue the hearing of any petition at any time during the meeting.
- h. A continuance shall be automatically re-docketed to be heard at the next regularly scheduled meeting of the Board of Zoning Appeals. Re-notification is not required.
- i. Only two continuances requested by the petitioner shall be permitted. All petitions not withdrawn by the petitioner and which do not qualify for a dismissal must be heard by the Board no later than three (3) meetings after the time of application.

**ARTICLE SIX  
ALTERNATE PROCEDURE: HEARING OFFICER**

601 RULES OF PROCEDURE: All rules of procedure applicable to the Board of Zoning Appeals shall apply to the Hearing Officer, except to the extent that provisions of this article impose a different requirement.

602 MEMBERSHIP AND STAFF:

- a. The Plan Commission shall appoint two (2) hearing officers. One (1) of the hearing officers shall generally fulfill the duties of the hearing officer, and the other hearing officer shall serve as an alternate in the event that the first is not available or has a conflict of interest.
- b. The Hearing Officer must be a resident of the jurisdictional area of the Plan Commission, or a resident of a municipality within the county and also an owner of real property located in whole or in part in the jurisdictional area of the Plan Commission. The Hearing Officer is typically a member of the Board of Zoning Appeals.
- c. Duties of the Planning Director:
  - a. The Director shall provide technical assistant to the Hearing Officer.
  - b. The Director shall be responsible for recording minutes of all Hearing Officer proceedings.
  - c. The Director shall process applications for petitions, shall be responsible for the custody and preservation of the official file for each petition, shall establish the petition docket, and shall write the public notice for each petition.

- d. The Director is not required to write a Staff Report for Hearing Officer Petitions.

603 MEETING DATE: Each petition shall generally be heard (14) fourteen days after the date of submittal of an application and no later than the next regularly scheduled Board of Zoning Appeals Hearing.

604 ELIGIBLE PETITIONS:

- a. The Hearing Officer may approve, approve with conditions or commitments, or deny only Development Standards Variances.
- b. Dimensional Development Standards Variances approved by the Hearing Officer shall not deviate more than 50% from the UDO requirement.
- c. The Planning Director may file a written objection to any petition and require transfer of any petition to the Board of Zoning Appeals.
- d. Any condition or commitment imposed by the Variance Hearing Officer may only be modified or terminated by the Board of Zoning Appeals.

605 TRANSFER OF PETITIONS: One or more of the following circumstances shall result in the transfer of a petition to the next regularly scheduled meeting of the Board of Zoning Appeals. Alternatively, the petitioner may withdraw the petition. New notice for transferred petitions is not required.

- a. The Hearing Officer determines the issues involved warrant consideration by the Board or it appears likely that the decision of the hearing officer would be appealed to the Board.
- b. The Planning Director files a written objection to a petition because:
  - a. The variance or conditional use sought would be injurious to the public health, safety, morals, and general welfare of the community; or
  - b. The use or value of the area adjacent to the property included would be affected in a substantially adverse manner.
- b. The petitioner does not accept conditions or commitments specified by the Hearing Officer or Planning Director.
- c. A person interested in the petition enters an oral or written objection to the petition.

606 CONDUCT & PROCEEDURE OF MEETINGS: Meetings may be conducted in the same manner as meetings of the Board of Zoning Appeals. However, the Hearing Officer may alter the meeting procedure to expedite the hearing of petitions. The petitioner is not required to be present for the meeting.

607 APPEALS: A decision of the Hearing Officer may not be a basis for judicial review, but it may be appealed to the Board of Zoning Appeals.

ADOPTED this \_\_\_\_ day of \_\_\_\_\_ 2023 by a vote of \_\_\_\_\_ ayes and \_\_\_\_\_ nays of members of the Board of Zoning Appeals of Shelby County, Indiana.

\_\_\_\_\_

, President

\_\_\_\_\_

, Secretary

ATTEST:

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Jason D. Clark

Plan Commission Attorney