

**Shelby County
Board of Zoning Appeals**

July 11, 2023 at 7:00 PM

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MEETING AGENDA

Shelby County Board of Zoning Appeals July 11, 2023, 7:00 P.M.

CALL TO ORDER

ROLL CALL

APPROVAL OF MINUTES

Minutes from the June 13, 2023 meeting.

OLD BUSINESS

BZA 23-22 – MARK LEE: NEGATIVE FINDINGS OF FACT

NEW BUSINESS

BZA 23-25 – MARK LEE: DEVELOPMENT STANDARDS VARIANCES. Located at 5815 W PR 874 S, Edinburgh, Jackson Township.

BZA 23-26 – SHELLY HAM: DEVELOPMENT STANDARDS VARIANCES. Located at 8800 S 600 W, Edinburgh, Jackson Township

V23-02 – DONALD M PITZER: ZONING VIOLATION. Located at 7398 W 700 N, Fairland, Moral Township.

DISCUSSION

None.

ADJOURNMENT

The next regular meeting of the Shelby County Board of Zoning Appeals is scheduled for Tuesday, **August 8, 2023 at 7:00 PM.**

Development Standards Varaince

FINDINGS OF FACT

Applicant: Mark Lee

Case #: BZA 23-22

Location: 5815 W PR 874 S, Edinburgh, Jackson Township.

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

Under future property ownership, use of a shared gravel driveway by multiple property owners would likely cause disagreements among the property owners regarding regular maintenance of the gravel driveway.

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

A paved road or driveway would increase the value of the property, thereby protecting surrounding property values.

3. The strict application of the terms of the Unified Development Ordinance will result in practical difficulties in use of the property.

Shared access by three residential lots would not necessitate installation of a public road per County road specifications, however a paved driveway requiring minimal maintenance would limit disputes between future property owners regarding driveway maintenance.

Property Details

Location: 5815 W PR 874 S,
Edinburgh, Jackson Township.

Property Size: 8.69-acres.

Current Land Use: Estate
Residential.

Zoning Classification:
A2 (Agricultural)
*This district is established for general
agricultural areas and buildings
associated with agricultural production.*

Future Land Use per Comp Plan
Estate Residential
*The purpose of this category is to
provide for new rural residential housing
opportunities in rural areas not well
suited for agriculture. New residential
development should have reasonable
access to roads and utilities and should
not significantly disrupt agricultural
activities. The residential density of this
category should not exceed one lot for
every two acres.*

	Zoning	Land Use
North	A2	Estate Residential
South	A2/RE	Estate Residential
East	A1	Cropland
West	R1	Single-Family Residential

Staff Report

Case Number: BZA 23-25
Case Name: Mark Lee – Development Standards
Variances

Request

Variations of Development Standards to allow:

1. Three (3) single-family lots to utilize a single paved private driveway (maximum of two single-family lots permitted).
2. One new lot without frontage on a public road (minimum 50-feet of road frontage required).

Code Requirement

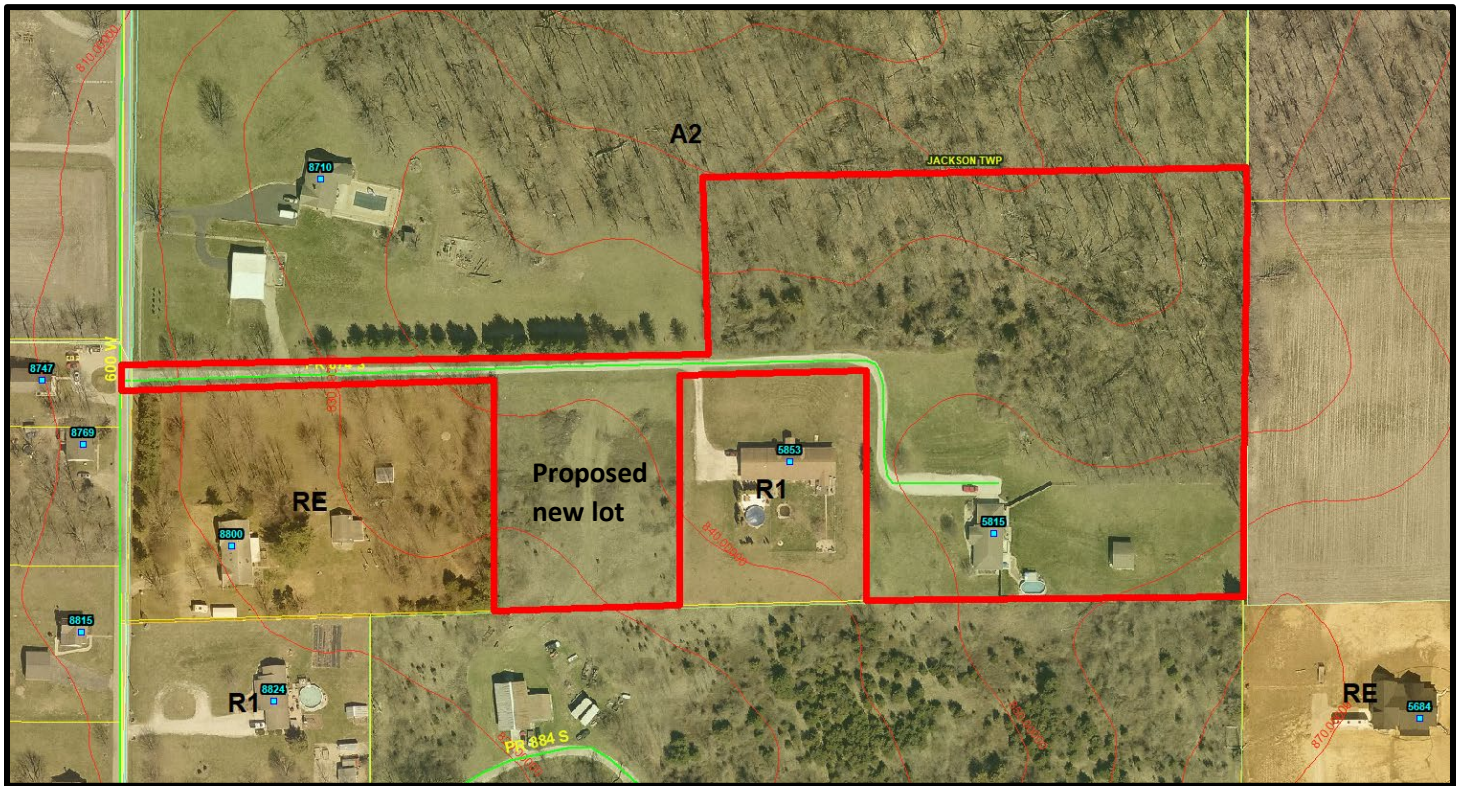
UDO Section 5.17 C 2: *Single-Family Residential Developments:* *The access to three (3) or more single-family lots using a shared easement or similar legal arrangement shall not be considered a driveway. These access facilities shall be established according to the regulations for a public street.*

Purpose of Requirements: The ordinance requires establishment of paved public streets to service multiple single-family lots to mitigate issues associated with shared use of private gravel driveways. Potential issues include:

- Disputes over driveway maintenance and access rights.
- Difficulty posed to visitors in locating homes from the public road.
- Difficulty posed to emergency vehicles in locating homes and turning around within the driveway.
- Vehicle conflicts if two or more cars utilize the driveway simultaneously.
- Migration of dust onto the public road from use of the driveway by multiple vehicles.

The road frontage requirement ensures clear visibility of lots from the public road and promotes orderly development.

Property Map



Case Description

- On June 13, 2023 the Board voted 3-2 to deny a request submitted by the petitioner to allow three lots to utilize a shared gravel driveway. The Board cited concern that under future property ownership, use of a shared gravel driveway by multiple property owners would likely cause disagreements among the property owners regarding regular maintenance of a gravel driveway. The petitioner has agreed to pave the driveway.
- A gravel driveway currently exists on the subject property which provides access to the subject property and one additional residential lot (5853 PR 874 S). The gravel driveway is identified as PR 874 S and the properties utilizing the driveway have 911 addresses addressed off the Private Road.
- The petitioner indicated that the driveway is 15-feet wide and has a recorded shared maintenance agreement.
- The petitioner intends to subdivide one additional lot off the subject property. This would result in the driveway providing access to three lots. The subdivision would require Plan Commission approval of a Simple Subdivision.
- To subdivide the property in the desired manner without variance approval, the ordinance would require that the petitioner install a public road per County Road specifications and dedicate the road, including a 50-foot right-of-way, to the County. The County Road specifications are attached to this report.

- The property is included in a three-lot minor subdivision, subdivided by the petitioner in 2005. At the time of the subdivision, the petitioner indicated an intent to divide the additional lot from the property in the future, however, did not include the lot in the plat due to the three-lot maximum restriction for minor subdivisions. Current ordinance permits re-subdivision of property in compliance with ordinance standards five years or more after initial subdivision.
- The 2008 UDO established the developed standard limiting shared driveways to no more than two residential lots. Prior to 2008, many rural subdivisions included shared driveways subject to the issues associated with shared driveways listed at the beginning of this report.

Staff Analysis of Findings of Fact

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

Staff Analysis: Approval of the variance would likely impact the safety and general welfare of owners of the lots. The homesites sit a significant distance from the public road and mature trees would obscure homesites from the road, which could pose difficulty in locating the properties in the case of an emergency. The narrow width of the driveway may cause conflict between vehicles using the driveway simultaneously and pose difficulty for large emergency vehicles turning around in the driveway.

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 narrow width of the driveway may cause conflict between vehicles using the driveway simultaneously, which could result in traffic backing out onto or blocking a public road classified as a Collector with a relatively high traffic volume.

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 petitioner has developed the property for residential purposes without approval of a variance.

Staff Recommendation

DENIAL primarily because:

1. The homesites sit a significant distance from the public road and mature trees would obscure homesites from the road, which could pose difficulty in locating the properties in the case of an emergency.
2. The narrow width of the driveway may cause conflict between vehicles using the driveway simultaneously, which could result in traffic backing out onto or blocking a public road classified as a Collector with a relatively high traffic volume.

If the Board chooses to approve the variance, Staff recommends the following **stipulations**:

1. **No more than three (3) single-family lots shall utilize the driveway.**

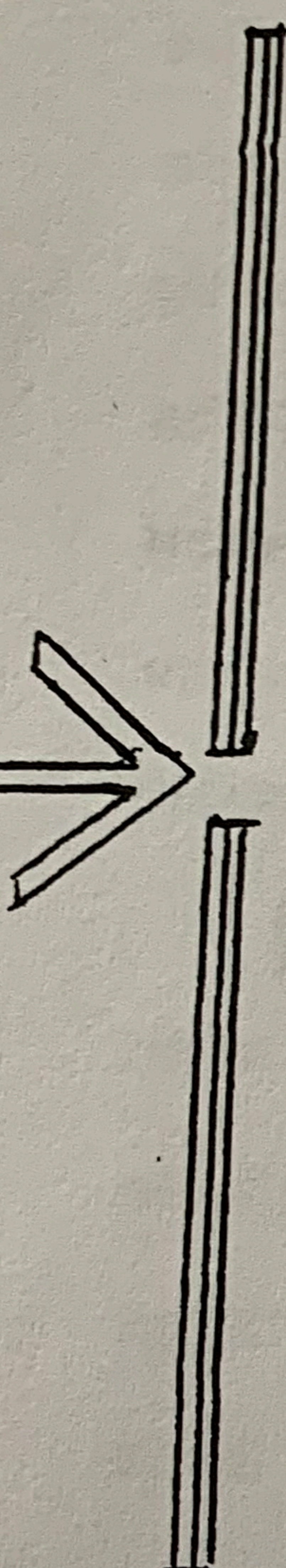
2. An 8' x50' paved pull-off shall be installed on the new lot along the driveway.
3. The shared portion of the driveway shall be at least fifteen (15) feet wide and shall be paved.
4. The petitioner shall submit the easement of record to the Plan Commission Office.

Applicant/Owner Information

Applicant:	Mark Lee 5815 W PR 874 S Edinburgh, IN 46124	Owner:	Mark & Rebecca Lee
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submitted to the Commissioners' Office for approval before constructed.

5. Bituminous or Asphaltic Graded Mix Pavement: If the developer shall elect to use Bituminous or Asphaltic pavement it must be built on a properly prepared road bed as noted in paragraph 2 of this Ordinance which is entitled ROADBED, by:



(1) Using two (2) four (4) inch compacted courses of No. 53 stone or the equivalent, compacted so as to give a finished compacted aggregate of eight (8) inches. The surface pavement then is to be three (3) inches of Bituminous or Asphaltic open graded mix, or other mix, as approved by the County Engineer, or the Board of Commissioners if there be no County Engineer, properly placed and rolled on the compacted base, with a chip and seal top of #12 stone, or

(2) Using six (6) inches of black base plus one (1) inch of topping laid on a two (2) inch fine aggregate subbase.

(3) In the discretion of the County Engineer or the Board of Commissioners if there be no County Engineer, the developer may delay the three (3) inch bituminous surface pavement indicated in part (1) above for a maximum of one (1) year providing he furnish to the Board of Commissioners cash or something else of equal value in the amount equivalent to the cost, in place, as determined by the County Engineer, or the Board of Commissioners if there be no County Engineer, of the three (3) inch surface pavement.

6. General Requirements: The road grade shall be constructed with not less than four (4) feet shoulders with appropriate side ditches or drainage swales as shall be required for good design. Drainage structures shall be provided as required and shall be designated on the design plans submitted.

Pavement to slope from center to the edge two (2) inches in ten (10) feet. The shoulders shall slope from the edge of the

Property Details

Location: 8800 S 600 W, Edinburgh, Jackson Township.

Property Size: 3-acres.

Current Land Use: Estate Residential.

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.

Proposed 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

Estate Residential

The purpose of this category is to provide for new rural residential housing opportunities in rural areas not well suited for agriculture. New residential development should have reasonable access to roads and utilities and should not significantly disrupt agricultural activities. The residential density of this category should not exceed one lot for every two acres.

	Zoning	Land Use
North	A2	Estate Residential
South	A2/R1	Estate Residential / Single-Family Res.
East	A2	Estate Residential
West	R1	Single-Family Res.

Staff Report

Case Number: BZA 23-26

Case Name: Shelly Ham – Development Standards Variances

Request

Variations of Development Standards to allow a new single-family residence:

1. Less than 1,600 sq. ft.
2. Without a two-car attached garage.

Alternate Request: Variations of Development Standards to allow:

1. An accessory structure utilized for human occupancy;
2. The total square footage of all accessory structures on the lot to exceed 50% the square footage of the footprint of the residence;
3. Three (3) enclosed accessory structures on one lot (maximum of two (2) permitted).

Code Requirement

UDO Section 2.14: *Minimum Dwelling Size: 1,600 sq. ft.*

UDO Section 5.11 D 1: *Minimum Garage Capacity: Minimum two-car, attached garage required for all single-family detached and two-family buildings.*

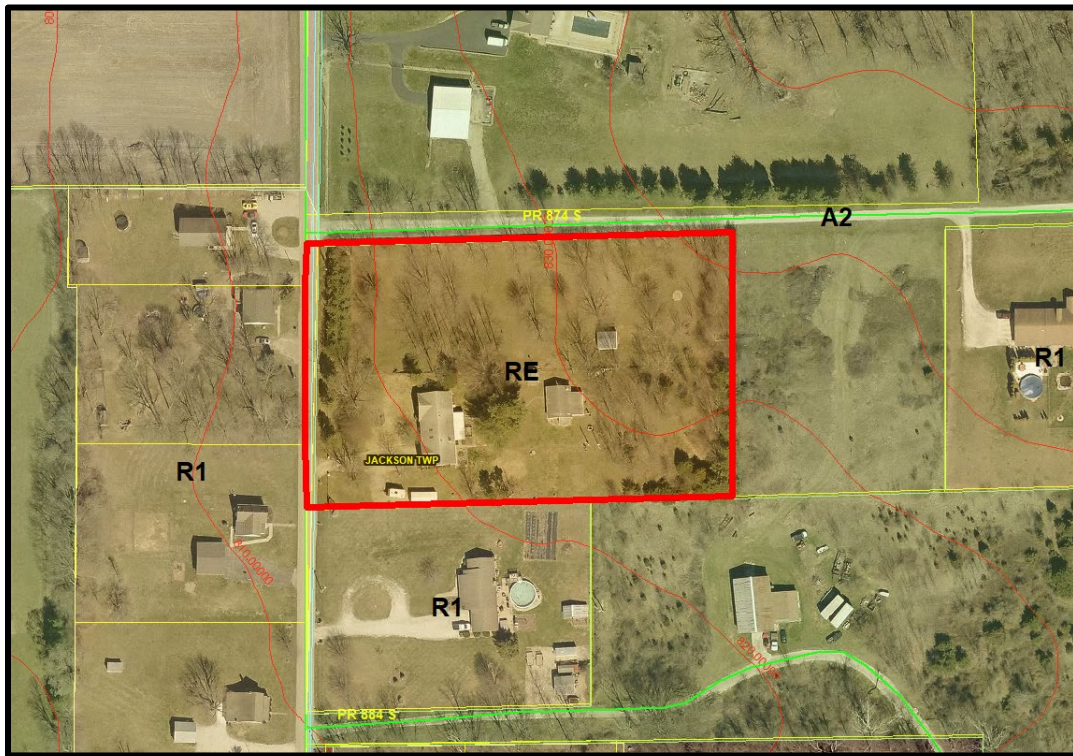
Purpose of Requirements – Architectural design guidelines encourages consistency among development, protects and improves upon the aesthetic character of the community, and protects property values.

UDO Section 5.04 D – Prohibited for Occupancy: *A permitted accessory structure shall not be utilized for human occupancy.*

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 occupancy of accessory structures maintains the zoning district’s intended residential density among properties. 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



Case Description

- The petitioner intends to place a modular home on the property to not exceed 1,300 sq. ft. and to construct a detached garage on the property.
- The petitioner intends to install a new driveway and septic system to service the modular home.
- The petitioner intends to occupy the modular home to care for her elderly father who lives in the existing home on the property.
- The petitioner intends to seek approval from the Plan Commission to rezone the property to R1 to subdivide the property into two, 1.5-acre lots.
- If the petitioner obtains approval of the rezoning and subdivision, the 1,600 sq. ft. minimum dwelling size and required attached garage would apply to development of a new home on a separate lot.
- If the petitioner does not obtain approval of the rezoning and subdivision, the accessory structure variances would apply to development of an additional dwelling unit on the same lot as an existing residence.

- Regardless of the type of variance approval, placement of the modular home would require Site Plan approval prior to issuance of construction permits to ensure that the structure complies with all County codes. The Site Plan Committee includes the Planning Director, Building Inspector, and Health Department Environmental Technician.

Staff Analysis of Findings of Fact

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

Staff Analysis: The new single-family residence would require Site Plan approval and construction permits, and the structure must comply with all building codes and sanitation requirements prior to final inspection.

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: Adjacent residences on the west side of CR 600 W do not exceed 1,300 sq. ft. and do not include attached garages. Therefore, the proposed single-family residence would not conflict with the character of the area.

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 development of a single-family residence consistent with the character of the area.

Alternate Request

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

Staff Analysis: The accessory structure utilized for human occupancy would require Site Plan approval and construction permits, and the structure must comply with all building codes and sanitation requirements prior to final inspection.

5. 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 accessory structure would resemble and function as a single-family residence. Adjacent residences on the west side of CR 600 W do not exceed 1,300 sq. ft. and do not include attached garages. Therefore, the proposed accessory structure would not conflict with the character of the area.

6. 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 an independent affordable housing option for a senior citizen on the same property as family members.

Staff Recommendation

APPROAL of both requests primarily because the size and design of the structure would be consistent with adjacent residences on the west side of CR 600 W.

Applicant/Owner Information

Applicant:	Denver Cooper 8800 S 600 W Edinburgh, IN 46124	Owner:	Same
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Petitioner: Shelly Ham

**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.

Such approval will not be injurious to the community as all necessary guidelines, permits, inspections and covenants will be followed.

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 value of the area will only increase and be a positive for the area. The use of the adjacent area will not change or be affected.

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.

All necessary ordinances, guidelines, permits, inspections & covenants will be followed.

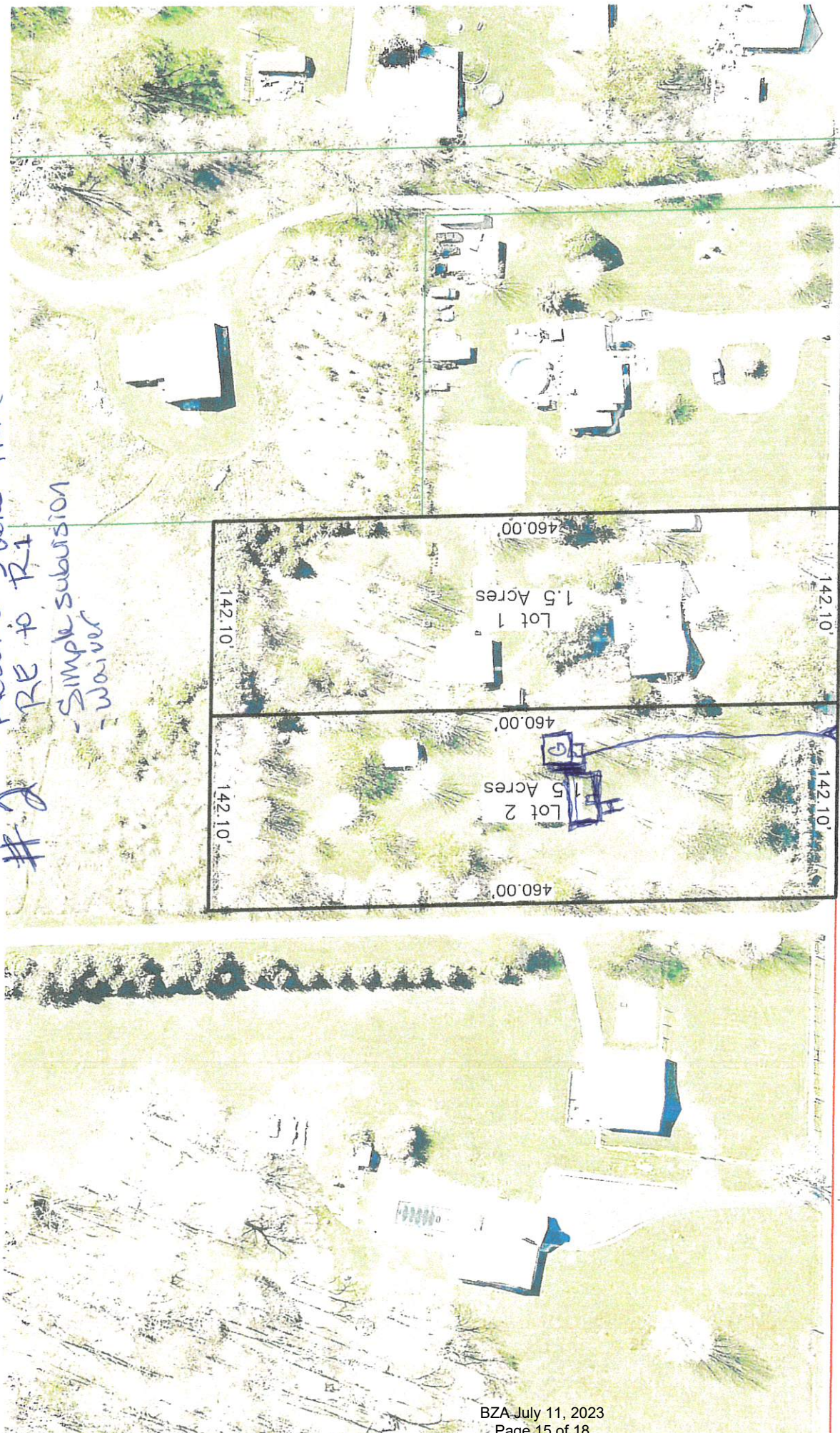
The Board of Zoning Appeals may review the applicant's findings of fact to assist with their decision-making process. Please see below for general guidance related to completing the findings of fact:

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.)

#2
- Rezone 3 acres from
RE to RT
- Simple subdivision
- Waiver



1" = 100'

Zoning Violation

Case Number: V23-02
Property Owner: Donald M Pitzer
Location: 7398 W 700 N, Fairland, Moral Township.

Violation

A fence in the front yard on property in the VR (Village Residential) District exceeding three (3) feet in height. Note that the ordinance defines the area of the property between the front of the house and the edge of the road as the front yard.

Section 5.23 F - Maximum Height for Walls & Fences

Violation Photographs



Case History

February 27, 2023 – Staff received a complaint regarding the installation of a lattice fence.

March 14, 2023 – Staff inspected the property and noted the lattice fence and a wood fence in violation of the maximum height requirement. Staff assumed that the complainant owned the wooden fence, therefore placed the violation of hold.

May 8, 2023 – The complainant notified Staff that the property owner in violation owned both fences.

May 15, 2023 – Staff sent the property owner a violation letter. The property owner contacted Staff and stated that he would not remove the fence. Staff informed him that she would forward his case to the BZA.

June 13, 2023 – Staff provided the BZA with an overview of the violation at their June meeting, and asked the Board if they would like to pursue enforcement action. They requested that Staff send the property owner a letter informing him that the BZA would consider further enforcement action at their next meeting.

July 3, 2023 – Staff sent the property owner a letter notifying him of hearing of the violation case before the BZA on July 11, 2023.

BZA Decision

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 # 7020 1290 0002 0297 1963

V23-02

May 15, 2023

Donald M Pitzer
7398 W 700 N
Fairland, IN 46126

The Shelby County Plan Commission observed a violation of the Shelby County Unified Development Ordinance on property you own at 7398 W 700 N, Fairland. 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:** 7398 W 700 N, Fairland
2. **Specific description of violation:** A fence in the front yard on property in the VR (Village Residential) District exceeding three (3) feet in height. Note that the ordinance defines the area of the property between the front of the house and the edge of the road as the front yard.
3. **Specific portion of ordinance violated:** Section 5.23 F - Maximum Height for Walls & Fences
4. **Options for corrective action:**
 - a. Lower height of fence.
 - b. Remove fence. A land use petition seeking to reinstall the fence at the previous height may be filed after correction of the violation.
 - c. 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 **June 5, 2023**. Failure to take corrective action by June 5, 2023 will result in a **fine of \$50**. If corrective action is not taken by June 5, 2023, 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.

Sincerely,



Desiree Calderella, AICP
Planning Director
Shelby County Plan Commission