

**Shelby County
Board of Zoning Appeals**

July 14, 2020 at 7:00 PM

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MEETING AGENDA

Shelby County Board of Zoning Appeals July 14, 2020, 7:00 P.M.

CALL TO ORDER

ROLL CALL

APPROVAL OF MINUTES

Minutes from the June 9, 2020 meeting.

WITHDRAWN CASES

BZA 20-15 – DANIEL MILLER & DEAN GARWOOD: USE & DEVELOPMENT STANDARDS VARIANCES. Located at 8565 N 600 W, Fountaintown, Moral Township.

BZA 20-19 – RONALD METCALF: DEVELOPMENT STANDARDS VARIANCES. Located at 9066 N 700 E, Morristown, Hanover Township.

OLD BUSINESS

None

NEW BUSINESS

BZA 20-20 – MICHAEL HENSEL: USE & DEVELOPMENT STANDARDS VARIANCES. Located at 11882 N 200 W, Fountaintown, Van Buren Township.

DISCUSSION

PROPOSED ORDINANCE AMENDMENT – ACCESSORY DWELLING UNITS

PATRICK BLACK ZONING VIOLATION

APPROVED HEARING OFFICER CASES

BZA 20-16 – HERTA LEWIS: DEVELOPMENT STANDARDS VARIANCE. Located at 219 S Conger St, Saint Paul, Novel Township.

BZA 20-17 – SCOTT & ANDREW SUMMERFORD: DEVELOPMENT STANDARDS VARIANCE. Located at 5492 W Range Rd, Shelbyville, Sugar Creek Township.

BZA 20-18 – CALLIE & JORDAN HEWITT: DEVELOPMENT STANDARDS VARIANCE. Located at 817 W 1080 N, Fountaintown, Van Buren Township.

ADJOURNMENT

The next regular meeting of the Shelby County Board of Zoning Appeals is scheduled for Tuesday, **August 11, 2020** at **7:00 PM**.

Property Details

Location: 9066 N 700 E,
 Morrystown, Hanover Township.

Property Size: 2.10 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.

Future Land Use per Comp Plan Agricultural
 The purpose of this category is to provide for traditional agricultural practices (such as crop production and livestock grazing) and modern agricultural practices (such as agricultural research facilities and CAFOs). Rural home sites may also occur within this category, however, the emphasis should remain on agriculture. New residential subdivisions that remove prime farmland from production should be discouraged. The residential density of this category should be one lot for every five acres.

Surrounding Development

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

Staff Report

Case Number: BZA 20-19
Case Name: Ronald Metcalf – Development Standards Variance

Request

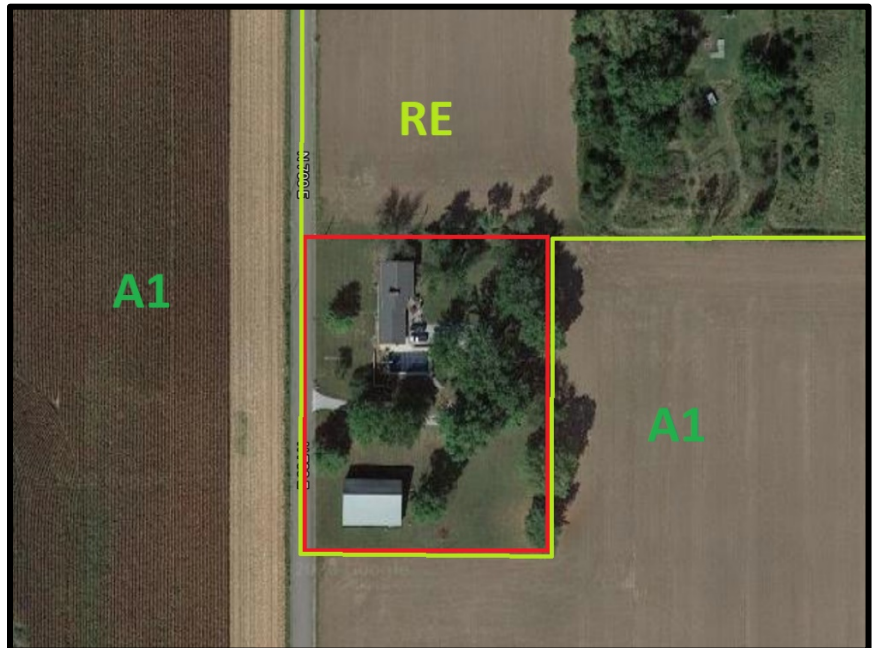
Variance of Development Standards to allow for a dwelling unit within an accessory structure.

Code Requirement

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

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

Property Map



Case Description

- The petitioner plans to construct a 2,400 sq. ft. barn with a workshop and dwelling unit.

- The dwelling unit would have a floor area of 1,200 sq. ft. and include a living area, kitchen, laundry room, one bedroom, and one bathroom.
- The petitioner plans to initially use the dwelling unit as a guest house. The petitioner’s father-in-law plans to occupy the dwelling unit within the next two years.
- The Health Department would review the building permit application for compliance with sanitation requirements prior to issuance of permits.

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 petitioner has applied for a building permit and the proposed 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: The proposed structure would have the appearance of a pole barn rather than a dwelling unit. Therefore, the structure would not alter the rural character of the area. The dwelling would only have one bedroom which would discourage future use of the structure as a primary dwelling for multiple people.

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 an independent affordable housing option for a senior citizen on the same property as family members, for the purpose of obtaining extra income, security, companionship, and/or services.

Staff Recommendation

APPROVAL primarily because the dwelling would only have one bedroom which would discourage future use of the structure as a primary dwelling for multiple people.

Staff recommends the following stipulations:

- 1. The variance shall expire when the structure is no longer needed by the petitioner’s father-in-law.**
- 2. Beginning in July of 2022, the petitioner shall provide notice to the Plan Commission office every other year regarding the continued need of the dwelling by petitioner’s father-in-law.**

Applicant/Owner Information

Applicant	Ronald Metcalf 9066 N 700 E Morristown, IN 46161	Owner:	Ronald & Cassandra Metcalf
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DEVELOPMENT STANDARDS VARIANCE

FINDINGS OF FACT

Applicant: RONALD METCALF

Case #: _____

Location: LEGAL DESCRIPTION: NW SW 16 14 8 2.10 AC / 9066 N 700 E MORRISTOWN TN 37061

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

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

IT IS LIKELY THIS VARIANCE WILL NOT BE INJURIOUS TO THE PUBLIC HEALTH, SAFETY, MORALS, AND GENERAL WELFARE TO THE COMMUNITY. THE USE OF THE SUBJECT SITE WILL BE THE SAME AS THE EXISTING RESIDENCE.

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.

IT IS LIKELY THAT THE USE AND VALUE OF RELEVANT ADJACENTS TO THE SUBJECT SITE WILL NOT BE AFFECTED IN A SUBSTANTIALLY ADVERSE MANNER BY ALLOWING THE REQUESTED VARIANCE

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.

Granting the variance will not impair an adequate supply of light and air to the property, or unreasonably increase the danger of fire or endanger public safety, or unreasonably diminish or impair established property values within the surrounding area, or in any other respect impact the public health, safety, comfort, or morals or welfare of the inhabitants.

N 700 E | 35'

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SHOP AREA

MASTER BEDROOM
12'-6" X 14'

BATH

WASH ROOM

KITCHEN
11' X 14'

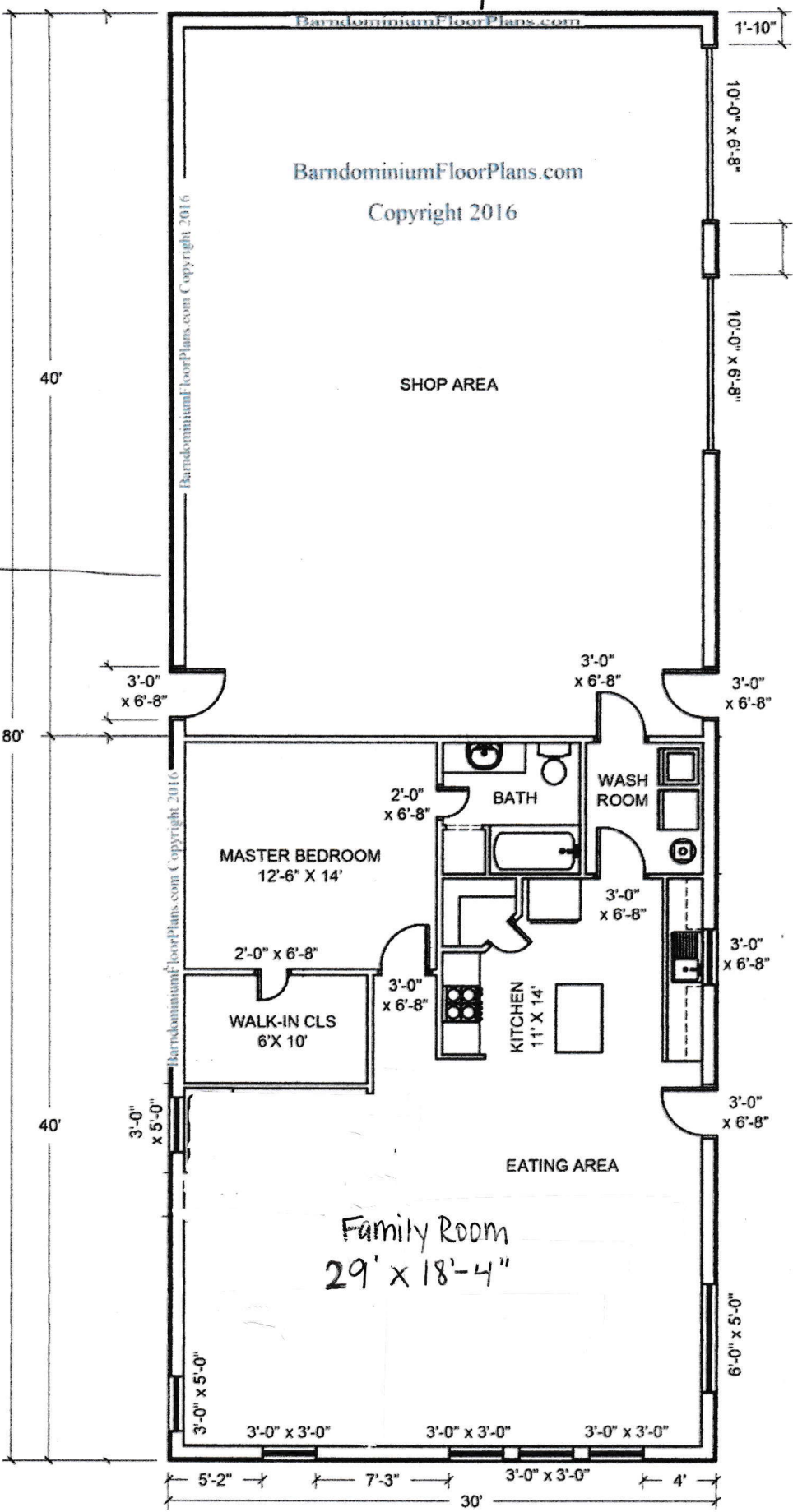
WALK-IN CLS
6' X 10'

EATING AREA

Family Room
29' X 18'-4"

PROPERTY LINE

SITE PLAN



Property Details

Location: 11882 N 200 W,
 Fountaintown, Van Buren Township.

Property Size: 1 acre.

Current Land Use: Single-Family
 Residential.

Zoning Classification:

R1 (Single-Family Residential)

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

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

Future Land Use per Comp Plan

Agricultural

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	R1	Single-Family Residential
South	RE	Cropland
East	RE	Residential Estate
West	A1	Cropland & Agricultural Commercial Operations

Staff Report

Case Number: BZA 20-20
Case Name: Michael Hensel – Use & Development
Development: Standards Variances

Request

Variance of Use to allow for a Type 3 Home Business (storage and maintenance of equipment related to a masonry business) in an R1 (Single-Family Residential) District.

Variances of Development Standards to allow for:

1. Construction of a 3,200 sq. ft. pole barn (accessory structures may not exceed 50% the square footage of the footprint of the residence in the R1 District).
2. A new gravel driveway (hard surface required for new driveways in the R1 District)

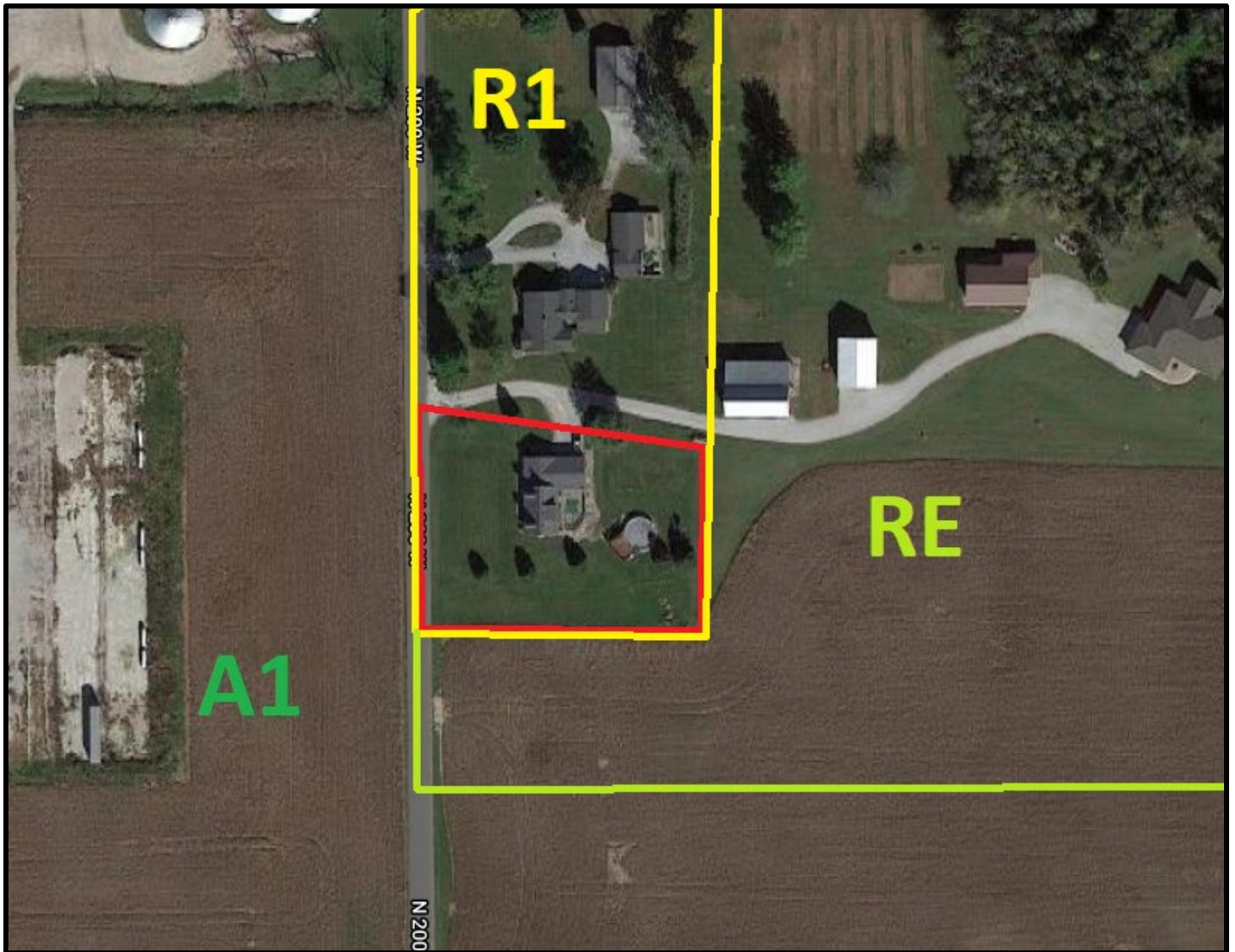
Code Requirement

UDO Section 5.07 F – 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.*

UDO Section 5.19 C – Materials: *All driveways shall consist of asphalt, concrete or other non-porous material approved by the Zoning Administrator.*

Purpose of Requirements – Limiting the size of accessory structures ensures that the residence remains the visual focal point of the property, protects the character of residential neighborhoods, and reduces the likelihood of use of a residential accessory structure for commercial purposes. Requiring hard surfaced driveways in neighborhoods having homes in close proximity protects adjoining properties from noise and dust associated with use of a gravel driveway.

Property Map



Case Description

- The petitioner plans to construct a 3,200 sq. ft. pole barn to use for storage of equipment and materials related to his masonry business. The petitioner also plans to repair and maintain equipment within the pole barn.
- The petitioner indicated that they prefer to conduct business operations from their residential property for convenient accessibility and maintenance of equipment and materials.
- The pole barn would exceed the size of the maximum permitted square footage by approximately 1,600 sq. ft.
- The pole barn would include plumbing. The Health Department would review the building permit application prior to issuance of a building permit.

- The petitioner plans to install a new gravel driveway to access the pole barn directly from CR 200 W. The driveway would comply with separation requirements identified in the UDO. Installation of the driveway would require a driveway permit.
- Business operations would comply with the standards for Type 3 Home Business identified in the UDO (see attached standards on following pages). The UDO only permits Type 3 Home Businesses in agricultural zoning districts, which typically include larger lots not in proximity to residential neighbors. Potential nuisances associated with businesses permitted as a Type 3 Home Businesses could negatively impact the use and enjoyment of nearby residential properties.

Staff Analysis of Findings of Fact

Use Variance

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

Staff Analysis: The proposed business use would comply with all standards for Type 3 Home Occupations identified in the UDO. Therefore, approval of the variance would not have a negative impact on 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: Business activities would occur on the side of the property adjoining cropland and the UDO permits Type 3 Home Businesses in agricultural zoning districts. Therefore, approval of the variance would not significantly impact residential properties in the area or impact the use of adjoining property for agricultural purposes.

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

Staff Analysis: The size of the property dictates the R1 zoning district however the property is located in an area predominantly uses for agricultural purposes, including agricultural commercial activities. The UDO permits Type 3 Home Businesses in agricultural zoning districts.

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 use of the property consistent with the rural character of the area.

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

Staff Analysis: The UDO permits Type 3 Home Businesses in agricultural zoning districts. Therefore, approval of the variance would not conflict with the agricultural future land use recommended by the Comprehensive Plan.

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 petitioner has applied for a building permit and the pole barn must comply with all building codes prior to final inspection. The new driveway would require a driveway permit. Therefore, approval of the variances should not impact 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: The surrounding area includes large pole barns and gravel driveways. Therefore, approval of the variances 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: The size of the property dictates the R1 zoning district however the property is located in an area predominantly uses for agricultural purposes. A strict application of the ordinance would not allow for use of the property consistent with the rural character of the area.

Staff Recommendation

APPROVAL primarily because the UDO allows Type 3 Home Businesses in agricultural zoning districts and the property is located in a predominantly agricultural area. The property directly across 200 W appears to include a commercial agricultural use. A 3,200 sq. ft. pole barn and gravel driveway would also not conflict with the agricultural character of the area.

Applicant/Owner Information

Applicant	Michael Hensel 11882 N 200 W Fountaintown, IN 46130	Owner:	Michael & Michelle Hensel
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Home Business Standards (HB)

5.35 HB-03: Type 3 Home Business Standards

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

A1 **A2** **A3**

The following standards apply:

- A. Permits: All Type 3 Home Businesses shall obtain a Land Use Certificate.
- B. Permissible Home Businesses:
 - 1. Permitted: The Type 3 Home Business shall be limited to woodworking, small engine repair, lawn service, assembly of products, automobile repair, welding, contracting business, landscaping business, light manufacturing or a similar use as determined by the Zoning Administrator. Use of the property or home for permitted agricultural land uses shall not be considered a Type 3 Home Business.
 - 2. Prohibited: The Type 3 Home Business shall not include any kind of direct retail sales.
 - 3. Discretion: Businesses not specifically listed above shall be interpreted by the Zoning Administrator as to whether the business is permitted as a home business or not.
- C. Personnel:
 - 1. Residency: The operator of the Type 3 Home Business shall reside in the house.
 - 2. Employees: Up to ten (10) employees may be employed by and work on site.
- D. Operations:
 - 1. Nuisance: The Type 3 Home Business shall not generate offensive noise, vibration, smoke, odors, dust, heat, glare, or electrical disturbances.
 - 2. Hours: The hours of operation of the Type 3 Home Business shall not interfere with the use and enjoyment of the rural area in which it is located.
- E. Design:
 - 1. Primary Structure:
 - a. The office component of the Type 3 Home Business may be operated in the primary structure (the home).
 - b. The Type 3 Home Business shall not exceed five percent (5%) of the square footage of the primary structure.
 - c. There shall be no evidence of the Type 3 Home Business from alterations to the exterior of the residence. However, the character of the property may show minimum evidence of its business use, including: exterior storage of materials, vehicles or equipment used in the Type 3 Home Business.
 - 2. Accessory Structure:
 - a. The Type 3 Home Business shall be primarily conducted within an accessory structure
 - b. The Type 3 Home Business may consume one hundred percent (100%) of the square footage of the accessory structure.
 - 3. Parking and Loading:
 - a. All off-street parking or loading facilities shall meet the requirements of the applicable zoning district.
 - b. No part of a minimum required yard shall be used for off-street parking or loading purposes.
 - c. There shall be no more than fourteen (14) operable vehicles parked on the site at any time, including the vehicles used by residents of the home.

Home Business Standards (HB)

4. Outdoor Storage:
 - a. No commercial vehicles shall be parked or stored outside between 9:00 p.m. and 5:00 a.m. unless parked or stored behind the accessory structure use for the Type 3 Home Business.
 - b. No outdoor storage of products, materials, supplies, waste, scrap, or the like shall be permitted unless fully within an opaque fence enclosure with gate tall enough to screen the outdoor storage. Fences used for screening shall not exceed eight (8) feet in height. The fenced enclosure shall not exceed 1,000 square feet in area and shall meet all setback requirements for an accessory structure. A fenced enclosure for outdoor storage shall not be located forward of the accessory structure used for the Type 3 Home Business.
5. Signs: One (1) wall sign is permitted on the accessory structure and it shall not exceed ten (10) square feet in sign area. The wall sign shall be fully located within ten (10) feet above ground level. Materials shall be aesthetically compatible and complementary to the accessory structure, specifically to make sure the sign is subtle and consistent with residential and neighborhood character. No special lighting shall be permitted to illuminate the sign.

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: For storage and maintenance of our equipment and material needed for our masonry business.

2. Days & Hours of Operation: N/A

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

4. Type and Frequency of Deliveries: N/A

5. Description of any Outdoor Storage: N/A

6. Description, Size, and Placement of any Signage: N/A

7. Description of Waste Disposal: Septic will tie into existing septic located in front of property.

8. Existing and/or Proposed Building and Site Improvements Pertaining to Proposed Use (ex. parking lot, landscaping, commercial upgrades to building, etc.): Additional and separate driveway will be added to access the pole barn.

**USE VARIANCE
FINDINGS OF FACT**

Applicant: Michael Hensel

Case #: _____

Location: 11882 N 200 W, 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 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. On and off the job site, our business follows all health and safety regulations directed by OSHA.
This practice will continue at our pole barn with regards to our business.

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.
While all items pertaining to the business, will be stored in the pole barn. This pole barn will add to the appeal and value of our home and neighbors home. The surrounding properties currently all have pole barns. This will increase the appeal and value for all.

3. **Practical Difficulty:** The strict application of the terms of the Shelby County Zoning Ordinance will result in a practical difficulty in the use of the property.
The location of the proposed pole barn will continue to show the best use of the property and business.
The water, septic and electric are all located within reach of need to continue project.

4. **Unnecessary Hardship:** The strict application of the terms of the Shelby County Zoning Ordinance will constitute an unnecessary hardship as they are applied to the property for which the variance is sought.
If we are not able to build the pole barn to our specifics, we'll be forced to continue to rent property outside of Shelby County. This increases the hardship for availability, accessibility, maintenance and growth for our business. We've had business property stolen due the lack of placement for our items, and are still at risk.

5. **Comprehensive Plan:** The granting of the variance does not interfere substantially with the Comprehensive Plan.
The pole barn will continue to increase the value and appeal to the property and not take away negatively.

**DEVELOPMENT STANDARDS VARIANCE
FINDINGS OF FACT**

Applicant: Michael Hensel

Case #: _____

Location: 11882 N 200 W, 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. Pole barn addition will not harmfully produce or dispose of any items on or around property. The pole barn will store all items according to OSHA standards that are follow on job sites.

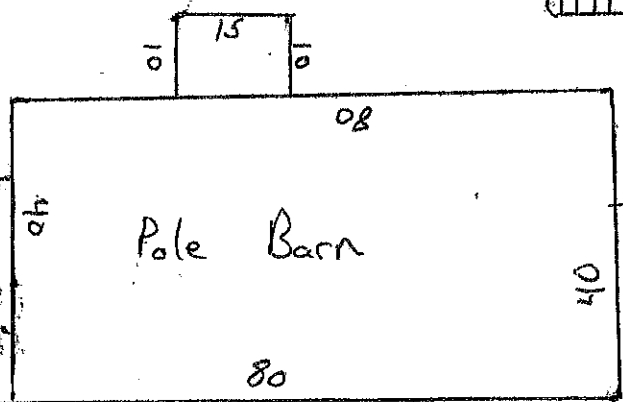
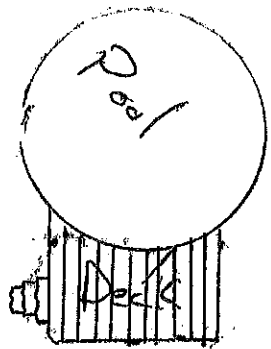
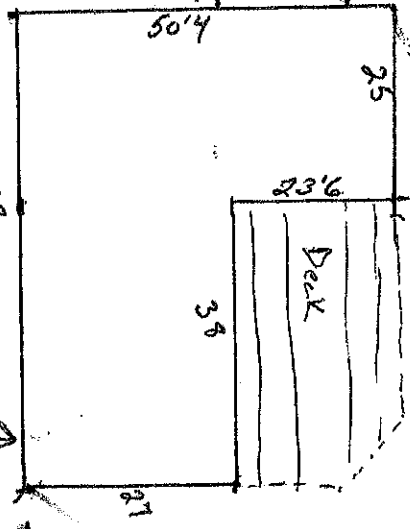
2. **Adjacent Property:** The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner. The pole barn will add value and appeal to the surrounding properties. All items will be properly stored and maintained with affect to neighbors.

3. **Practical Difficulty:** The strict application of the terms of the Shelby County Zoning Ordinance will result in a practical difficulty in the use of the property. The pole barn will allow access to needed material and equipment to further help and maintain our business.

228

204'

179



↑ 10

226'

An Accessory Dwelling Unit (ADU) amendment to the ordinance would allow for some or all types of secondary dwelling units without BZA approval. However, approval would require review by the planning director, a special permit, and compliance with design guidelines to ensure the structure remains subordinate to the primary residence. The language of the ordinance can also discourage ADUs used for certain purposes, such as use for a rental unit.

Ordinance Options

- Status Quo – no ordinance amendment
 - All detached dwelling units on the same property as a primary dwelling must be approved by the BZA
 - Attached dwelling units without an interior door between the two units must be approved by the BZA
 - Accessory dwelling unit (attached or detached) is not currently defined in the Ordinance. Staff interpretation:
 - Detached – a structure containing a living area, bathroom, and full kitchen. A full kitchen includes a full-size stove and refrigerator.
 - Attached – a portion of a structure containing a living area, bathroom, and kitchen and without an interior door between the primary and accessory unit.
- Allow one or more of the following:
 - Permanent Housing for Family Member or individual not paying rent (the ordinance would prohibit rental units, but this would be difficult to enforce).
 - Guesthouse
 - Temporary Rental Unit (Airbnb)
 - Temporary Living Quarters while constructing or renovating/repairing a house
- Legalize ADUs established prior to this ordinance as long as they notify the plan commission and comply with the requirements of this ordinance
- Allow approval to transfer with property rather than new owner reapplying

ADU-01 – Accessory Dwelling Units

The Accessory Dwelling Unit section applies to the following zoning districts: **A1, A2, RE, R1, R2, VR, VM**

The intent of Accessory Dwelling Unit section is to provide for an independent affordable housing option, particularly for senior citizens and young adults, on the same property as family members, in order to obtain extra income, security, companionship, and services. This section is intended to provide for ADUs while protecting the health, safety, and welfare of the County and the character of single-family residential neighborhoods.

- A. Permits: An ADU shall require a Land Use Certificate, Improvement Location Permit, and applicable Building Permits.
- B. ADU Land Use Certificate Filing Requirements:
 - 1. Application: Application for an ADU Land Use Certificate shall be made on a form provided by the Zoning Administrator.
 - 2. Supporting Information:
 - a. Site plan showing at a minimum the boundaries of the property and distance of the ADU from the property lines.
 - b. Floor plan of the ADU showing at a minimum the exterior dimensions of the ADU and use of each room.
 - c. Certification by the Shelby County Health Department that the existing or proposed water supply and sewage disposal facilities are adequate for the proposed ADU.
 - d. Statement of intended use of the ADU.
 - e. Owner-Occupancy Affidavit.
 - f. Plan for remodel or removal of the ADU at the time the ADU Land Use Certificate expires.
 - 3. Fees: Applicable fees shall be paid at the time the Application for an ADU Land Use Certificate is filed.
- C. Duration:
 - 1. Expiration: An ADU Land Use Certificate shall expire when one or more of the following circumstances occurs:
 - a. Two years after the date of approval;
 - b. The ADU is altered so that it no longer complies with the provisions of this ordinance, is expanded or removed;
 - c. The ADU is vacant for a period of three (3) consecutive months.
 - d. The property owner ceases to permanently reside in either the primary single-family residence or ADU; or
 - e. The property is sold.
 - 2. Notification of Expiration: The property owner shall notify the Zoning Administrator at the time a condition arises that causes the ADU Land Use Certificate to expire.
- D. Timing of Installation: An ADU shall not be constructed prior to a primary single-family residence.
- E. Maximum Number: One ADU per primary single-family residence.
- F. Design:
 - 1. Location:
 - a. An ADU may be attached or detached. For purposes of this section, 'attached' is defined as attached to or created within a primary single-family residence and 'detached' is defined as attached to or created within a residential accessory structure.
 - b. A detached ADU shall not be located more than one hundred (100) feet from the primary single-family residence.
 - c. A detached ADU shall be located on the same lot as the primary single-family residence.
 - 2. Bedrooms: An ADU shall not include more than two bedrooms.
 - 3. Maximum Height: An attached ADU shall not exceed the maximum height for primary structures in the base zoning district and a detached ADU shall not exceed the maximum height for accessory structures in the base zoning district.
 - 4. Maximum Size:
 - a. The main floor area of an ADU shall not exceed 33% of the main floor area of the primary single-family residence or 899 sq. ft., whichever is less.

Commented [DC1]: This section would allow for administrative review and approval of second dwelling units for family members typically approved by the BZA. The standards of this section also allow for greater control over the design of the structure.

Commented [DC2]: If we want to allow a second dwelling for the purposes of housing guests and temporary renters (Airbnb), we can eliminate this provision.

Commented [DC3]: If we want the approval to go with the land rather than the owner, we can eliminate this provision. Unless the property owner notifies us, we would not know if the property is sold which makes enforcement difficult. Eliminating this provision would allow for an alternative housing option for new buyers.

Commented [DC4]: If we want to allow a second dwelling for the purpose of housing while constructing a primary structure, we can eliminate this provision and add: An ADU established prior to construction of the primary single-family residence shall comply with all standards applicable to a primary single-family residence, other than minimum primary dwelling size, as well as all standards of this section.

Commented [DC5]: Design requirements ensure that the ADU remains subordinate to the primary structure, therefore discouraging the appearance of multiple residences on a property.

Commented [DC6]: The smallest house permitted in the County is 900 sq. ft. Prohibiting an ADU greater than 800 sq. ft. would distinguish an ADU from a primary dwelling.

- b. An detached ADU shall apply toward the maximum size of accessory structures in the base zoning district.
- 5. Attached ADU:
 - a. Shall include an entrance separate from the primary residence and living, kitchen, and bathroom facilities separate from the primary residence.
 - b. Shall not include an entrance on the side of the ADU adjoining the front yard.
 - c. Shall be designed and constructed of materials compatible with the primary dwelling unit.
- 6. Development Standards: ADUs shall comply with all development standards identified in this ordinance, except to the extent that that provisions of this section impose a different requirement.
- G. Building Setback: An ADU shall comply with the minimum yard setbacks for primary structures in the base zoning district.
- H. Driveway: An ADU shall utilize the same driveway as the primary single-family residence however may have a separate parking area.
- I. Owner-Occupancy: The property owner shall occupy either the primary single-family residence or the ADU as their permanent residence for at least six (6) months per year and at no time receive rent for either unit. For the purposes of this section, the "owner" shall be one or more of the individuals who hold title directly or indirectly to the property.
- J. Illegal ADU: Any addition to a single-family residence or residential accessory structure established prior to date ordinance adopted, not legally permitted by variance granted by the Board of Zoning Appeals, and meeting the definition of an ADU and in compliance with the design standards of this section may continue in existence provided the following requirements are met:
 1. An application for an ADU Land Use Certificate is submitted and approved by the Zoning Administrator.
 2. The property owner signs an affidavit affirming that the ADU complies with the minimum requirements of the Shelby County Building Code.

Commented [DC7]: Reduces the perceived appearance of two dwellings.

Commented [DC8]: This section discourages use of a second dwelling as a rental. Violation of this section would constitute a zoning violation and fines could be imposed. However, we would likely not know if a violation exists without a complaint. This same problem currently exists for units approved by the BZA.

Also, if the owner must occupy one of the units then the occupants of the other unit would likely be a family member or other person the owner feels comfortable with as a neighbor.

Commented [DC9]: Encourages review and legalization of existing ADUs.

11.02 – Defined Words

Dwelling, Accessory Unit (ADU) - A dwelling unit that is subordinate and accessory to a single-family dwelling.