

**Shelby County
Board of Zoning Appeals**

September 12, 2023 at 7:00 PM

Table of Contents

Agenda..... 3

BZA 23-32 Mt. Gilead Baptist Church – Development Standards Variances..... 4

 Staff Report 4

 Petitioner’s Findings of Fact 7

 Sign Plan 8

 Site Plan 9

BZA 23-34 Marc Halata – Use Variance 10

 Staff Report10

 Petitioner’s Statement of Intent 13

 Petitioner’s Findings of Fact 14

 Site Plan 15

MEETING AGENDA

Shelby County Board of Zoning Appeals September 12, 2023, 7:00 P.M.

CALL TO ORDER

ROLL CALL

APPROVAL OF MINUTES

Minutes from the August 8, 2023 meeting.

OLD BUSINESS

None.

NEW BUSINESS

BZA 23-32 – MT. GILEAD BAPTIST CHURCH: DEVELOPMENT STANDARDS VARIANCES. Located at 4449 S Smithland Rd, Shelbyville, Hendricks Township.

BZA 23-34 – MARC HALATA: USE VARIANCE. Located west of the County line on the south side of CR 700 N, located along Cotton Run, Hanover Township.

DISCUSSION

VIOLATION UPDATES

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

APPROVED HEARING OFFICER CASES

BZA 23-28 – DAVID & SANDRA RUSH: DEVELOPMENT STANDARDS VARIANCE. Located at 1453 S 500 W, Shelbyville, Hendricks Township. *Approved August 8, 2023.*

BZA 23-31 – FOUNTAINTOWN CHRISTIAN CHURCH: DEVELOPMENT STANDARDS VARIANCE. Located at 797 W Brookville Rd, Fountaintown, Van Buren Township. *Approved August 8, 2023.*

BZA 23-3 – MICHAEL DILLON: DEVELOPMENT STANDARDS VARIANCE. Located at 4058 W PR 733 S, Shelbyville, Jackson Township. *Approved August 17, 2023.*

ADJOURNMENT

The next regular meeting of the Shelby County Board of Zoning Appeals is scheduled for Tuesday, **October 10, 2023 at 7:00 PM.**

Property Details

Location: 4449 S Smithland Rd,
 Shelbyville, Hendricks Township.

Property Size: 2.94-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

Institutional

The purpose of this category is to provide land for buildings for government or private institutional use such as schools, churches, hospitals, and museums.

Surrounding Development

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

Staff Report

Case Number: BZA 23-32

Case Name: Mt. Gilead Baptist Church –
 Development Standards Variances

Request

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

1. a height of 7.6-feet (maximum 6-foot height permitted);
2. animated components (not permitted).

Code Requirement

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



Case Description

- The petition intends to replace an existing manual changeable letter sign with the proposed sign. The proposed sign consists of a pedestal base, 16 sq. ft. permanent message area, and 16 sq. ft. electronic message area.
- Several churches and schools in the Institutional District within the County have recently upgraded their signs to include electronic message components.
- Several residential properties on the east side of Smithland Rd. would have view of the sign.
- The *International Sign Association* provides recommendations for regulating electronic message center signs. Staff has incorporated these recommendations into the stipulations of approval (see Staff recommendation).

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: An electronic message center 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. Allowing for a sign which slightly exceeds the height requirement would improve sign visibility along a road with a relatively high traffic volume.

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: Implementation of diming features relevant to ambient conditions, limiting light cast at the property line, and non-operation of the electronic message 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. Allowing the sign to slightly exceed the height requirement would not significantly impact adjacent residential properties.

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

Staff Analysis: Several churches and schools in the Institutional District within the County have recently upgraded their signs to include electronic message components. An electronic message center would allow the petitioner to display a variety of messages to the traveling public.

Staff Recommendation

Staff recommends **APPROVAL** primarily because an electronic message center 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.

Recommended Stipulations:

1. **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.**
2. **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.**
3. **The EMC portion of the sign shall be turned off between 10 PM and 5 AM.**
4. **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

Applicant:	Mt Gilead Baptist Church 4449 S Smithland Rd. Shelbyville, IN 46176	Owner:	Same
------------	---	--------	------

**DEVELOPMENT STANDARDS VARIANCE
FINDINGS OF FACT**

Applicant: Mt Gilead Baptist Church

Case #: _____

Location: 4449 Smithland Rd

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.

Set back from road

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.

helps indentify community

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.

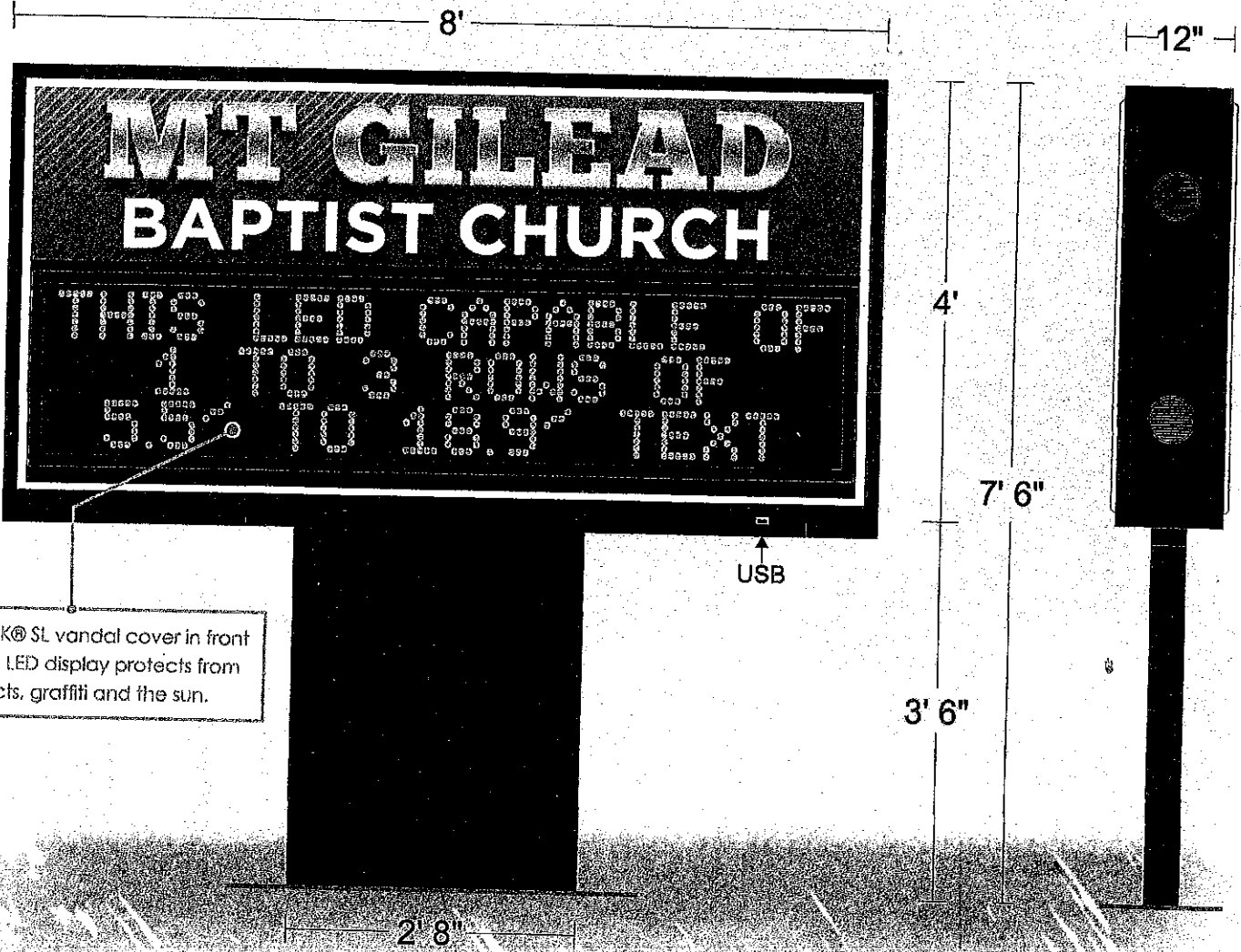
I see no difficulty

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.)



TUFFAK® SL vandal cover in front of the LED display protects from impacts, graffiti and the sun.

StewartSigns
 ONE SIGN. ONE COMPANY
 1-800-237-8928 stewartsigns.com

TekStar Color 20mm 24x112
 Cabinet size: 4' x 8'
 Sk: 1021527-1 Cust: 1398635
 6/30/2023 F/J Arena PROPOSAL
 Scale: 5/8"=1' Cabinet Color: Black

Signature _____
 Date _____

Please confirm that all lettering, colors and graphics are correct before signing. Changes to artwork after signature is received will incur a \$200 art change fee.



This custom artwork is not intended to provide an exact match for ink, vinyl, paint, or LED color. Signs are designed for an illuminated graphic and art is based off of this premise. Non-illumination during daylight hours may result in graphics of varying appearance. Brickwork and masonry are not included in the proposal with the exception of Cornerstone products. Measurements shown are approximations; final product dimensions may vary. LED images shown are simulated to replicate optimum viewing distance. Original design, do not duplicate.



Property Details

Location: West of the County line on the south side of CR 700 N, located along Cotton Run, Hanover Township.

Property Size: 6.4-acres.

Current Land Use: Natural Resources.

Zoning Classification:

A2 (Agricultural)

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

BZA: Protect the integrity of land and operations within the Agricultural District.

Future Land Use per Comp Plan

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

	Zoning	Land Use
North	A1	Pasture
South	A1	Cropland
East	A2	Natural Resources
West	A1	Cropland (proposed Commercial Solar Energy System)

Staff Report

Case Number: BZA 23-34

Case Name: Marc Halata – Use Variance

Request

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

Code Requirement

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

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

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

Property Map



Case Description

- The petitioner intends to use the property for private hunting and shooting. The petitioner indicated that he and his family would hunt and shoot firearms on the property.
- Proposed alterations to the property include construction of a berm as a backstop, installation of tree stands, installation of a shipping container to be used for storage, and minimal tree clearing and grading for the creation of a parking area and trails.
- Most of the property lies within Federal Emergency Management Agency (FEMA) Special Flood Hazard Area Zone A and Indiana Department of Natural Resources (IDNR) designated Floodway and Flood Fringe.
 - The contributing stream is Cotton Run, which runs north to south through the property.
 - The petitioner does not propose any alterations to land or development in the Floodway. Therefore, a State Floodplain Permit is not required.
 - The petitioner does not propose any alternations to land or development in the Flood Finge, other than berms and grading.
 - On August 8, 2023 the Plan Commission Office issued a permit for berms and grading in the Flood Fringe. No specific floodplain development standards apply to non-structural development in the Flood Fringe.
 - The Indiana Department of Environmental Management (IDEM) has inspected the site and determined that no IDEM permit is required.
- The closest residential lot lies over 900-feet from the subject property.
- Shelby County has not adopted any additional ordinances prohibiting hunting or the shooting of firearms on private property. When the County receives a complaint regarding shooting, the Sheriff's Department will typically conduct a site inspection to verify that the property owner and guests shoot in a safe manner.
- In July of 2023 Staff received a complaint from a nearby residential property owner regarding safety concerns related to intended use of the property for a shooting range and the altering of land within a designated floodplain. Staff sent the petitioner a violation letter for alteration of land in a floodplain without a permit and notified the petitioner that he would need to obtain a variance if he intends to use the property for shooting of firearms. The petitioner promptly obtained a floodplain permit and applied for a variance.
- Use variances expire at the time the property changes ownership. Therefore, the future owner of the property would need to obtain a new variance to use the property for recreational purposes.

Staff Analysis of Findings of Fact

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

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

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

Staff Analysis: Shooting and hunting on the property in a safe manner as determined by the Shelby County Sheriff's Department would not jeopardize the safety of persons farming adjacent property or maintaining the adjacent proposed solar array. Perceived safety threats and noise from firing would not significantly impact any adjacent residential property due to the significant distance between the subject property and nearby residential properties.

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

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

4. State Requirement: The strict application of the terms of the Zoning Ordinance will constitute an unnecessary hardship if applied to the property for which variance is sought.

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

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

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

Staff Recommendation

APPROVAL primarily because most of the property lies within a designated floodplain which severely limits use of the property for any purpose other than recreation or open space. Perceived safety threats and noise from firing would not significantly impact any adjacent residential property due to the significant distance between the subject property and nearby residential properties.

Applicant/Owner Information

Applicant:	Marc Halata 818 Bobtail Dr. Greenfield, IN 46140	Owner:	Same
------------	--	--------	------

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: This property will be used for deer, turkey, and squirrel hunting. Occasionally, me and my son and family would like to shoot. Berms are being constructed so that this can be done safely and without risk to anyone near the property. Trails will be cut through the woods for hunting and camping.

2. Days & Hours of Operation: No specific times. Hunting and shooting during appropriate and legal times.

3. Maximum Number of Customers per Day/Week/Month: No customers of any kind will be on the property.

4. Type and Frequency of Deliveries: No deliveries of any kind.

5. Description of any Outdoor Storage: One shipping container, within the woods for cart and lawnmower storage. Shipping container has been freshly painted and only its doors are visible.

6. Description, Size, and Placement of any Signage: Only no trespassing signs are posted near the edge of property.

7. Description of Waste Disposal: No waste generated.

8. Existing and/or Proposed Building and Site Improvements Pertaining to Proposed Use (ex. parking lot, landscaping, commercial upgrades to building, etc.): Berms will be constructed for a proper backstop. Treestands placed for hunting. Ground smoothed out to have the safe parking of personal vehicles. Fewer than 10 trees removed.

USE VARIANCE
FINDINGS OF FACT

Applicant: Marc Halata

Case #: _____

Location: 700 N Morristown, 73-04-33-200-004.000-019

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 impact will be done to the general welfare of the county. No extra traffic will be generated.No extra pollution will be generated.

The property will be better maintained than it has ever been.Due to precautions, public safety will not be affected in any way.

People have been shooting and hunting this property for decades and I plan to make sure that any shooting or hunting is safer than ever.

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.
My personal and family use of the property will do no harm to the neighboring property. My closest neighbor, Conley, is 602 yards from any form of shooting. Proper berms

are being constructed so that no round will ever leave the property. Noise would be the only concern but most noise will be in the afternoon.

Berms and woods will help mitigate and sound. Neither adjoining neighbor, Brian Byrnes and Chuck Smith, have any problems with my plans. No odors or appearance concerns exist.

3. **Practical Difficulty:** The need for the variance arises from some condition particular to the property involved.
Though hunting may not be banned on A2 property, any private shooting is not allowed under A2 zoning. A variance of use is necessary to achieve this goal.

I plan to treat all surrounding property with the same care I would treat my own. Fewer than 1/2 acres of 6.4 acres is being altered to accommodate

any shooting. The woods are not being altered for hunting except for the clearing of paths and the hanging of tree stands.

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.
This land is remote and has been used for decades, if not centuries for hunting and recreational use. 5.4 of the 6.4 acres are woods and creek.

This land has never been used agriculturally and should have been zoned open/recreational since its initial zoning.

After a neighbor complaint, I hve been informed that I must apply for a variance. Without this variance, the property is useless.

5. **Comprehensive Plan:** The granting of the variance does not interfere substantially with the Comprehensive Plan.
This variance is being granted in a remote, unincorporated area. This will not affect traffic, commerce,

growth, farming, or impact Shelby County in any way economically. Care is being taken to minimize any potential

impact whatsoever. The property is being used to further the structure of family and teaching my child proper values.

E 700 N

