

Shelby County Board of Zoning Appeals
Meeting Minutes
July 9, 2019

Members Present:

Doug Warnecke
Jim Douglas
Kevin Carson
Dave Klene
Rachael Ackley

Members Absent:

None

Staff Present:

Desiree Calderella – Planning Director
Mark McNeely – Board Attorney

Call to Order and Roll Call:

Kevin Carson called the meeting to order at 7:00 pm in Room 208 A at the Court House Annex, Shelbyville.

Approval of Minutes

Doug Warnecke made a motion to approve the minutes from June 11, 2019. Dave Klene seconded the motion. The minutes were approved 5-0.

Old Business

**BZA 19-1 – STEPHEN BLAIR: USE & DEVELOPMENT STANDARDS
VARIANCE – Findings of Fact. The property is located at 3199 E 875 S, Waldron.**

The Board adopted the following findings of fact:

1. The approval will not be injurious to the public health, safety, morals, and general welfare of the community.
2. The use and value of the area adjacent to the property included in the variance will be affected in a substantially adverse manner because the placement of a Recreational Vehicle for use as long term living quarters in a residential neighborhood would likely have a negative impact on adjacent property values.
3. The need for the variance does not arise from some condition peculiar to the property involved because no evident condition particular to the property would prevent residential development in compliance with the Unified Development Ordinance.

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 because no evident condition particular to the property would prevent residential development in compliance with the Unified Development Ordinance.
5. The approval does interfere substantially with the Comprehensive Plan because the proposal would interfere with the provisions identified in the Plan for agricultural residential areas because the proposed use is not a single-family residence and would not be compatible with the natural setting.

New Business:

BZA 19-21 – GARY & JANE LARKEY: USE VARIANCE – To allow for an Event Venue in the A1 (Conservation Agricultural) District. The property is located at 8609 W 1200 N, New Palestine.

The petitioner was not present. Doug Warnecke made a motion to table the petition until the next meeting. Rachel Ackley seconded the motion. The motion was approved 5-0.

BZA 19-22 – JACOB BRATTAIN: USE & DEVELOPMENT STANDARDS VARIANCES – To allow for a small construction and property maintenance business and possible similar future commercial uses in the A1 (Conservation Agricultural) District. Also to allow for a primary structure 35 ft from the proposed SR 9 right-of-way line, 15 ft from the north property line, and 25 ft from the south property line; an accessory structure 5 ft from the rear property line; lot coverage exceeding 15%; use of an existing driveway with a maximum width of about 60 ft and located 5 ft from the south property line; a wall sign not to exceed 10 sq ft in area. The property is located at the address 6082 N SR 9, Shelbyville.

Desiree Calderella read the petition into the record and indicated that Staff recommends approval with two stipulations indicated in the staff report and an additional stipulation that the petitioner install an agricultural fence along the south side of the driveway.

Jacob Brattain gave an overview of the request and indicated that the large right-of-way for SR 9 limited the buildable area of the lot, and therefore he needed to request the development standards variances.

The Board opened the hearing for public comment. There was none. The Board closed the public comment portion of the hearing.

Kevin Carson summarized an email submitted by Gregg Graham who owns property adjoining the site (see email in case file).

Q: Dave Klene – Would semi-trucks make deliveries to the property?

A: Mr. Brattain – No, but maybe a passenger truck and small enclosed trailer.

Q: Doug Warnecke – Will the building require a septic system and have you received a driveway permit from the State?

A: Mr. Brattain – No, but plan to receive approval from the State for the existing driveway.

Q: Dave Klene – Will you have a parking area?

A: Mr. Brattain – Yes, gravel placed in front of the building.

Q: Doug Warnecke – Will the business have regular hours.

A: Mr. Brattain – No. Plan to use the building initially only for storage and may add a small office to the front of the building in the future.

Q: Kevin Carson – Would you agree to a stipulation that the property could never be used for a residence.

A: Mr. Brattain – Yes.

Desiree Calderella confirmed that the current zoning would not permit residential uses.

Doug Warnecke made a motion to vote on variance with a stipulation. Rachael Ackley seconded the motion. The petition was **approved 4-1** with a stipulation:

Use of the property shall comply with Section 5.35 of the Unified Development Ordinance – Type 3 Home Business Standards (except for subsections C.1, E.1.a, E.1.b, and E.2 that apply to property including a residence).

Doug Warnecke cast the negative vote.

The Board adopted the following findings of fact for the use variance:

1. The approval will not be injurious to the public health, safety, morals, and general welfare of the community.
2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner.
3. The need for the variance arises from some condition peculiar to the property involved
4. 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.
5. The approval does not interfere substantially with the Comprehensive Plan.

The Board adopted the following findings of fact for the development standards variances:

1. The approval will not be injurious to the public health, safety, and general welfare of the community.
2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner.
3. The strict application of the terms of the Shelby County Unified Development Ordinance will result in a practical difficulty in the use of the property.

BZA 19-23 – JOHN & MARY FISHER: SPECIAL EXCEPTION – To allow for construction of a new single-family residence and residential accessory structures (new dwellings not permitted in the A1 District). The property is located at approximately 3550 S 800 E, Waldron.

Desiree Calderella read the petition into the record and indicated that Staff recommends denial.

John Fisher indicated that the proposed building site had included a well for over one-hundred years, that it had previously included a barn yard, that the site would allow for proper drainage, and that he found it the least productive portion of the overall tract. He indicated that he had already planted crops on the portion of the tract not including the building site. He indicated that he planned to build a one-story, handicap accessible home with basement and a 40' X 60' accessory structure.

The Board opened the hearing for public comment.

Mary Fisher concurred with Mr. Fisher's statements. She also indicated that they did not plan to sell the home outside of the family or build any other homes on the property.

The Board closed the public comment portion of the hearing.

Jim Douglas made a motion to vote on the special exception. Doug Warnecke seconded the motion. The petition was **approved 5-0**.

The Board adopted the following findings of fact:

1. The proposed special exception is consistent with the purpose of the zoning district and the Shelby County Comprehensive Plan.
2. The proposed special exception will not be injurious to the public health, safety, morals, and general welfare of the community.
3. The proposed special exception is in harmony with all adjacent land uses.
4. The proposed special exception will not alter the character of the district.
5. The proposed special exception will not substantially impact property value in an adverse manner.

Discussion

Augustine Building Violation

Kevin Carson stated that the Board could discuss how the remedy the situation to bring the building into compliance with County code, but that the homeowner and contractor would need address any modification to their agreement as a civil matter.

Keith LaRance, the contractor, presented several photographs of the structure to the Board. He indicated that the cost of obtaining a bond to become listed had caused a problem.

Cheryl Augustine indicated that she thought they would not need a permit because they intended to use the structure as a shed after no longer needed by her mother-in-law.

Desiree Calderella explained that the County inspector had suggested improvements to the structure to render the structure safe for habitation, however bringing the structure into compliance with building code would incur significant structural alterations and expense.

Doug Warnecke stated that someone would need to obtain and pay for permits.

Mr. LaRance stated that he had not acted as a general contractor prior to building the project and did not have general liability insurance.

Ms. Augustine indicated that her mother-in-law likely would not need to live in the structure for a long period of time. She indicated that she had approval from the Health Department to connect to the structure to the existing septic system.

Mark McNeely explained that any potential civil suit filed against the County related to the structure would have to prove negligence on part of the County. He indicated that he believed that if we explained our standards to the homeowner, and ensured that the homeowner abided by those standards, that the County would be protected from civil action.

Kevin Carson stated that nobody else can live in the structure after no longer needed by their mother-in-law. He stated that the structure appeared better suited for a dwelling than some older dwellings in the County. He stated if the Board chose not to impose and penalty that they would set a precedent and suggested doubling the permit fees and requiring all inspections.

Dave Klene suggested not doubling the permit fees because the cost of bringing the structure into compliance would act as a fine. Doug Warnecke agreed.

The Board agreed that Mr. LaRance could not pull the permits.

The Board decided:

- **The structure must come into full compliance with State building code.**
- **The owner must retroactively pull all permits for a dwelling and they would only need to pay the standard permit fee.**
- **The mother-in-law cannot live in the structure until it comes into compliance with State building code.**
- **Only the mother-in-law may reside in the structure.**
- **Unless attached to the house, no other person shall reside in the structure after the mother-in-law no longer needs the structure.**

