

**Shelby County Board of Zoning Appeals**  
**Meeting Minutes**  
**May 14, 2024**

**Members Present:**

Kevin Carson  
Terry Knudson  
Dave Klene  
Megan Hart  
Jim Douglas

**Members Absent:**

None

**Staff Present:**

Desiree Calderella – Planning Director  
Jason Clark – Board Attorney

**Call to Order and Roll Call:**

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

**Approval of Minutes:**

Dave Klene made a motion to approve the minutes from April 9, 2024. Megan Hart seconded the motion. The minutes were approved 5-0.

**Old Business:**

**BZA 24-11 – CORNERSTONE CHRISTIAN FELLOWSHIP: FINDINGS OF FACT**

**BZA 24-12 – AMERICAN TRAILER WHOLESALERS: FINDINGS OF FACT**

**BZA 24-13 – MARK E SHANNON: FINDINGS OF FACT**

Kevin Carson made a motion to adopt the Findings of Fact for cases BZA 24-11, BZA 24-12, and BZA 24-13 indicated in the May 14, 2024, meeting materials and Terry Knudson seconded the motion. The Findings of Fact indicated in the meeting materials were adopted 5-0.

**New Business:**

**BZA 24-15 – SCOTT & LORI SCUDDER: DEVELOPMENT STANDARDS VARIANCE – To allow for a 768 sq. ft. detached garage exceeding 50% the square**

**footage of the footprint of the residence. [UDO Sec. 5.07 f 1]. Located at 204 E Washington St, Waldron, Liberty Township.**

Desiree Calderella read the petition into the record and stated that Staff recommends approval.

Lori Scudder stated that she planned to build a two-car garage.

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

Megan Hart made a motion to vote on the petition and Dave Klene seconded the motion. The petition was **APPROVED 5-0**.

Megan Hart made a motion to adopt the Findings of Fact indicated in the Staff Report and Kevin Carson seconded the motion. The Findings of Fact indicated in the Staff Report were adopted 5-0.

**BZA 24-17 – GLEN R LOSEY: DEVELOPMENT STANDARDS VARIANCES – From Type 2 Home Business Standards to allow a Type 2 Home Business (used car and truck sales) conducted outside of the home [UDO Sec. 5.34 D 1 a], including outdoor storage of vehicles [UDO Sec. 5.34 D 1 c], and having parking and loading facilities exceeding the minimum requirements of the zoning district [UDO Sec. 5.34 D 3 a]. Located at 10865 N 150 E, Morristown, Van Buren Township.**

Desiree Calderella read the petition into the record and stated that Staff recommends approval with stipulations.

Glen Losey indicated that he intends to operate a small-scale business that would not generate much traffic.

The Board opened the hearing for public comment.

Blake Newkirk, who lives in Bengal, suggested that the Board should restrict the number of vehicles kept on the property to remain consistent with the Board's previous decisions regarding automobile businesses.

Joy Douglas, who lives at 10976 N 150 E, referenced previous problems associated with an automobile business operated on a different property in the neighborhood. She referenced inconsistencies between the variance request and a letter sent to the neighbors by the petitioner regarding the proposed business. She asked how the petitioner had determined the proposed traffic generated by the business and who decides which neighbors receive legal notice. She expressed concern about pedestrian safety and hazardous materials associated with automobile uses.

Dwight Douglas, who lives at 10976 N 150 E, asked how the petitioner could legally list a residential address on a Dealer's License.

Tom Orr, who lives at 10833 N 150 E, indicated that he believed the petitioner would operate a well-managed and safe business.

The Board closed the public comment portion of the hearing.

Glen Losey explained that the scale of the business would not justify an investment in a commercial property.

Dave Klene asked for details regarding outdoor storage.

Glen Losey indicated that he envisioned keeping five to ten vehicles on the property and that he would store parts outdoors if he did not have enough space in the barn. He explained that a fence would contain all outdoor storage as shown on the Site Plan submitted with the variance application.

Jim Douglas explained that the County often receives complaints regarding automobile-oriented businesses and expressed concern with the burden of zoning enforcement of stipulations. He indicated that automobile-oriented uses should only occur on commercial property.

Kevin Carson and Jim Douglas suggested a stipulation to not allow the approval to transfer with the property. They also referred to other variances for automobile-oriented businesses turned down by the Board.

Terry Knudson referenced another property in the neighborhood with a business which has become aesthetically unpleasing.

Dave Klene suggested limiting the number of vehicles stored behind the fence to prevent stacking of junk cars behind the fence. He asked the petitioner if he would agree to no more than eight vehicles behind the fence.

Glen Losey agreed to store no more than eight vehicles behind the fence.

Dave Klene made a motion to vote on the petition with Staff's recommended stipulations and the addition of two stipulations:

1. No more than eight vehicles shall be stored behind the fence
2. The variance shall not transfer with the property.

Megan Hart seconded the motion. The petition was **DENIED 3-2**, with Dave Klene and Megan Hart casting a vote to approve.

Kevin Carson made a motion to continue the Findings of Fact to the next meeting and Dave Klene seconded the motion. The Findings of Fact were continued 5-0.

**BZA 24-18 – KRISTIAN REEDY: USE & DEVELOPMENT STANDARDS VARIANCES – To allow for agritourism, specifically a U-Pick Flower Farm, in the RE (Residential Estate) District and lack of designated ADA parking spaces [UDO Sec. 5.60 F], and a 6 sq. ft. commercial ground sign [UDO Sec. 5.73]. Located at 10318 N 850 W, Fairland, Moral Township.**

Desiree Calderella read the petition into the record and stated that Staff recommends approval with stipulations.

Kristian Reedy explained that she would typically expect fewer customers to visit the site than she had indicated in her variance application. She explained that most groups would carpool to the site, therefore she expects little impact on traffic. She indicated that similar agritourism operations exist in the area. She explained that her full-time job, farmers market obligations, and ability to plant flowers would limit the amount of time she could dedicate towards offering flower picking activities.

The Board opened the hearing for public comment.

Scott Furguson, who owns property in Shelbyville, indicated that waiving the requirement to provide ADA parking spaces would limit access to the disabled segment of the community.

Blake Newkirk, who lives in Bengal, indicated that ADA parking spaces would not serve a purpose since customers would need to walk out into the flower field.

Jeff Hayes, who owns property at 10216 N 850 W, expressed concern that approval of the variance would set a precedent to allow other businesses to operate in the neighborhood. He asked the Board to ensure that any approval would not allow the petitioner to operate an event venue on the property and to limit the hours of operation to earlier than 9PM.

The Board closed the public comment portion of the hearing.

Kristian Reedy explained that the business would not operate continuously throughout the day. She clarified that the requested variance and Staff's recommended stipulations would limit use of the property to a minimal-impact u-pick flower farm.

Kevin Carson suggested limiting the hours of operation to 9AM to 7PM due to the location of the property within a residential neighborhood.

Jim Douglas asked if the width of the driveway would allow for the passing of vehicles.

Kristian Reedy explained that vehicles would visit the property by appointment only, and therefore vehicles would not enter and exit the property at the same time.

Terry Knudson asked if the petitioner would agree to the limit of ten customer vehicles per day.

Kristian Reedy indicated that she does not anticipate more than ten customer vehicles per day.

Kevin Carson asked if the use would include the sale of flowers.

Kristian Reedy explained that most of the business use includes off-site flower sales, however, she would like the ability to provide the u-pick flower experience.

Terry Knudson made a motion to vote on the petition with stipulations and Dave Klene seconded the motion. The petition was **APPROVED 5-0** with **stipulations:**

- 1. The agritourism use shall be limited to picking of flowers and produce. Special events, other types of retail sales, and other agritourism activities shall be prohibited.**
- 2. Hours of operation shall be restricted to four (4) days per week between the hours of 9:00 AM to 7:00 PM.**
- 3. No more than ten (10) customer vehicles shall visit the site per day.**

Kevin Carson made a motion to adopt the Findings of Fact indicated in the Staff Report and Terry Knudson seconded the motion. The Findings of Fact indicated in the Staff Report were adopted 5-0

**BZA 24-19 – BURNHAM SEV SHELBY LLC: USE VARIANCE – To allow for to allow for an anaerobic digester facility, including biofuel production, in the A4 (Agricultural Commercial) District. Located at 11599 N 200 E, Morristown, Van Buren Township.**

Desiree Calderella read the petition into the record and stated that Staff recommends approval with stipulations.

Jordan Caldwell, the owner of the property, spoke in support of the petition.

Briane House, with Pritzke & Davis, LLP, represented the petitioner. He explained that the project would benefit the environment by processing waste, would benefit agriculture

by providing fertilizer by-product, would benefit the economy by providing jobs, and would produce natural gas to serve the State's energy needs. He indicated that the Indiana Department of Agriculture and Shelby County Farm Bureau support the project. He explained that the facility would reduce and eliminate on-site odor and would not process manure. He indicated that approval of the project would not conflict with the industrial land use recommendation for the area or the emphasis placed on agriculture by the Comprehensive Plan. He explained that the project would comply with all development standards applicable to the HI District.

Mike Carter, lead engineer for Burnham and co-founding member of the company, spoke about the relevant experience of the members of the company and project partner Host Bio Energy. He provided a general overview of the project and anaerobic digestion process. He emphasized that the anaerobic digestion process would reduce the odor of the digestate. He provided a copy of his remarks for the record (see case file).

Andrew Fansler, a licensed real estate broker in Indiana for over 20 years, stated that the project would not have any negative impacts on real estate values in the area. He referenced the existing use of the site and adjacent landfill.

The Board opened the hearing for public comment.

Lisa Wojihoski-Schaler, representing the Shelby County Northwest Concerned Citizens Coalition, expressed concern about procedural matters, including the minimum 10-day notice requirement, location of the public notice signs, and lack of informational meeting prior to the public hearing. She indicated that the public may not have enough time or information to educate themselves on the petition.

Mike Buccieri, who lives at 1309 E Shelby 1200 N, explained that the project would impact thirty-four Shelby County houses and ten Hancock County houses in the area. He explained that Burnham has not established a track record for safe and efficient operation of anaerobic digestion facilities. He expressed concern about additional truck traffic, lack of drainage plan, and apparent financial incentive for development of the project.

Thomas Write, who lives at 11118 N 600 E, outlined how the petition does not comply with the findings of fact. He explained that the Morristown Volunteer Fire Department is not equipped to respond to a methane explosion or other catastrophic event caused by the facility and asked questions about public safety. He explained that the project would adjoin the Morristown town limits, and that the Town had passed an ordinance prohibiting the development of anaerobic digesters in the Town. He indicated that the County should not pass all enforcement authority onto the EPA and IDEM. He indicated that the existing use of the property does not justify approval of a variance for a related use. He explained that the petitioner would obtain a financial benefit by obtaining project approval by use variance because the code would not require that the project comply with the standards applicable to the HI District.

Scott Furguson, speaking as the President of the Shelby County Recycling District, explained that the City of Shelbyville plans to ship solid food waste collected from City residents to the digester facility, which would reduce waste shipped to the landfill. Speaking as the Mayor of Shelbyville, he explained that the city placed a lid on its digester which reduced on-site odor and the digester produces enough gas to power the facility in the winter. He stated that the County should support agricultural businesses such as the proposed digester facility.

Jenna Write, who lives at 11118 N 600 E, expressed concern with the motivation of out-of-state companies, lack of trust between the public and the property owner, that the company has no experience, lack of public involvement in the process, that the petition does not comply with the findings of fact, and with development of land in general.

Megan Platt, President of Shelby County Farm Bureau and representing the Farm Bureau, read a statement of support (see case file).

Matt Linville, owner of Linville Lawn Care, outlined the benefits of the current composting operation for his company and spoke in support of the Caldwell family.

Gary Pieratt, a resident of Morristown, spoke about the intent of zoning regulations and environmental impacts (see case file).

Brian Asher, Executive Director of the Shelby County Development Corporation, explained that the proposed operation would reflect the County's core value of agriculture while contributing to the tax base. He explained that the I-74 Corridor Group, which includes several agricultural agencies, has developed an Agricultural Strategy which includes methods to attract anaerobic digesters. He indicated that Genovis, a third-party economic development expert, had determined that the project would generate roughly \$445,000 annually in taxes.

Blake Newkirk, who lives in Bengal, indicated that standards applicable to the HI zoning district would not apply to the project if the company obtained a use variance.

Steve Cummings, who lives at 5851 S 200 E, expressed concern about lack of information regarding safety, odor, and environmental impacts.

David Eberhart, a resident of Morristown, indicated that the smell of the town bakery exceeds that of the landfill and spoke in support of the Caldwell family.

Travis Marsh, an employee of Caldwell's, indicated that the project would create jobs, spoke about the value that Caldwell's operations place on safety, and spoke in support of the Caldwell family.

Tristan Stacey, an employee of Caldwell's, spoke about his positive experience working

for Caldwell's.

Jay Hancock, who lives at 11842 N Shelby 100 E, explained that Caldwell's have gone above and beyond in capital expenditures to address the odor issues associated with the compost operation, spoke to the quality of the Caldwell's business operations, and spoke to the trustworthiness of the Caldwell family.

Evan Matlock, who farms ground in Hancock County adjacent to the property, spoke about the importance of innovation and sustainability in farming. He explained that Caldwell's implement innovative business practices. He explained that anaerobic digesters exist throughout the Country. He indicated that other fertilizer production techniques produce more odor than a digester. He explained that staffed Fire Departments respond to Bungee in Morristown, and therefore could also respond to emergencies at the anaerobic digestion facility.

Greg Schmith, who lives at 11185 N 200 E, indicated that he supports the project if it eliminates odor from the compost facility. He spoke to the trustworthiness of the Caldwell family. He asked the Board to place a stipulation on the approval that would prohibit the use of animal corpses in the digestion process.

The Board closed the public comment portion of the hearing.

Briane House addressed the public's concerns. He indicated that the petitioner had followed all procedures outlined by the Board regarding public notice. He explained how the project would mitigate odor. He provided a letter to the Board from Kem Anderson, County Highway Superintendent, indicating that the road could accommodate the traffic generated by the development (see case file). He explained that the County has a disaster plan and interlocal agreements in place to provide a response in the case of an emergency at the facility. He explained that the Town of Morristown does not prohibit development of digesters within the Town limits, but regardless the proposed digester lies within the County's jurisdiction. He indicated that use variance complies with the findings of fact and that the petitioner had followed the advice of the Planning Director regarding the application process. He explained that additional review processes would apply to the project prior to construction. He indicated that the petitioner had complied with all application processes and therefore the Board should not grant a continuance.

Kevin Carson asked why the petitioner had applied for a use variance versus a rezone.

Briane House explained that the Planning Director had recommended a use variance, however, that the proposal would comply with the findings of fact for both types of petitions.

Desiree Calderella outlined the reasons for her recommendation of a use variance versus a rezoning as outlined in the Staff Report and indicated that the petitioner has not evaded



any County rules by pursuing the use variance process over the rezoning process.

Kevin Carson indicated that the use variance process does not allow for review by the Plan Commission or County Commissioners. He indicated that the Plan Commission has restricted approval to a specific use when approving a rezoning. He asked if the petitioner would agree to a stipulation that the use variance would only apply to the area of the property proposed for the digester facility.

Mike Carter agreed to a stipulation that the approval would only apply to the plan submitted, but not to a restriction on specific acreage due to the possibility of minor site plan adjustments.

Kevin Carson asked if the petitioner had considered installing a dousing pond on the property.

Mike Carter indicated that the submitted Site Plan shows a firewater tank and that any fire suppression system would comply with applicable codes.

Terry Knudson inquired about gas handling procedures.

Mike Carter summarized the employee safety training procedures, the safety mechanisms within digester facilities, and indicated that the facility would comply with all State laws. He indicated that the digestion process has existed for over one hundred years and emphasized the qualifications of the business partners. He indicated that noise would measure 40 decibels at 600-feet from the facility.

Kevin Carson indicated that the UDO does not permit production of more than 5,000 gallons of biodiesel per year in the A4 District and asked if the project would require an additional variance.

Jim Douglas indicated that the production of liquid fuel differs from gas fuel.

Desiree Calderella explained that biodiesel is a liquid and methane is a gas, therefore the biodiesel use does not apply to the proposed digester. She explained that the ordinance only permits gas-related uses in districts with larger setbacks.

Briane House explained that liquid fuel differs in environmental impacts from gas fuel.

Jim Douglas indicated that a similar facility has existed in the city limits of Shelbyville for over forty years. He indicated that the project would produce green energy. He spoke to the quality of the Caldwell's business operations. He indicated that the project would be a tremendous asset to the community.

Megan Hart explained that she did not view the project as an accessory use to the

compost facility because it would interconnect into the natural gas line and therefore the petitioner should have applied to rezone the property to HI. She indicated that other agricultural-energy production facilities have industrial zoning. She expressed concern that the Board would set a precedent for allowing utility interconnection facilities in the A4 District. She asked for clarification on the hardship imposed by not approving the variance.

Briane House explained that case law defines hardship as a practical difficulty, not an impossibility. He also explained that approval of the variance would not legally bind the Board to approve a similar variance for another piece of property. He indicated that the facility must have compost to function, and therefore the facility functions as an accessory use to the compost facility.

Megan Hart asked if the facility would process manure.

Briane House indicated that the project would not focus on the process of manure.

Megan Hart asked if the facility would process methane from the adjacent landfill or from other sites.

Briane House stated that the facility would not process methane from other properties.

Megan Hart asked if the project would result in the relocation of existing compost piles.

Briane House stated that the project would not result in the relocation of existing compost piles.

Megan Hart asked if the facility would process animal corpses.

Briane House explained that some waste may contain scraps of animal corpses, however, the project would not process full animal corpses.

Megan Hart asked if the petitioner would agree to a stipulation that would prevent a future owner from processing animal corpses.

Briane House explained that the variance would only apply to the current owners.

Dave Klene made a motion to vote on the petition with stipulations and Terry Knudson seconded the motion. The petition was **APPROVED 3-2**, with Kevin Carson and Megan Hart casting the dissenting votes, with **stipulations:**

- 1. The size and location of all structures and site development shall be consistent with the Site Plan submitted with the variance application.**

2. **All future structural development proposed in the petition and outdoor storage of remaining solids shall comply with the setback requirements for the HI (High-Impact) District, specifically, 50-foot front yard setback and 100-foot side and rear yard setbacks for all on-site development.**
3. **Liquid effluent shall be stored in a covered lagoon.**
4. **The petitioner shall submit a copy of all EPA, IDEM, and any other applicable permits to the Plan Commission office prior to operation of the facility.**

Dave Klene made a motion to adopt the Findings of Fact indicated in the Staff Report and Terry Knudson seconded the motion. The Findings of Fact indicated in the Staff Report were adopted 3-2, with Kevin Carson and Megan Hart casting the dissenting votes.

**Discussion**

None.

**Adjournment:**

With no further business to come before the Board, Dave Klene moved to adjourn, and Terry Knudson seconded the motion. The meeting was adjourned.

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President	Date
Jim Douglas	

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Secretary	Date
Kevin Carson	