



Commissioner Marilyn Brown • Commissioner Paula Brooks • Commissioner John O'Grady  
President

Economic Development & Planning Department  
James Schimmer, Director

# Franklin County Board of Zoning Appeals

Franklin County Courthouse  
Commissioner's Hearing Room – 26th Floor  
Columbus, OH 43215

Tuesday, April 21, 2014  
1:30 p.m.

1. Call roll for board members
2. Introduction of staff
3. Swearing in of witnesses
4. Approval of minutes from the January 21, 2014 meeting
5. New Business:

**A. VA-3812 – Anthony Hray**

<b>Applicant/ Owner:</b>	Brian and Beth Warner
<b>Township:</b>	Brown Township
<b>Site:</b>	4042 Amity Road (PID #120-000791)
<b>Acreage:</b>	1.02-acres
<b>Zoning:</b>	Rural District
<b>Utilities:</b>	On-site water and wastewater
<b>Request:</b>	Requesting a Variance from Sections 512.02(2) and 650.162(a) to legitimize the expansion of an illegally constructed accessory building that fails to meet the required property line setback, exceeds the maximum size permitted and is located within the Big Darby Creek Riparian Setback in an area zoned Rural.

6. Adjournment of Meeting to May 19, 2014



**Commissioner** Marilyn Brown • **Commissioner** Paula Brooks • **Commissioner** John O'Grady  
President

**Economic Development & Planning Department**  
James Schimmer, Director

## MINUTES OF THE FRANKLIN COUNTY BOARD OF ZONING APPEALS

**Tuesday, January 21, 2014**

The Franklin County Board of Zoning Appeals convened on the 26th floor, Franklin County Courthouse, 373 South High Street, Columbus, Ohio, 43215, on Tuesday, January 21, 2014.

Present were:

Gary Dever, Chairperson  
Christopher Baer, Vice Chairperson  
Tim Guyton  
Nancy Hunter

Franklin County Economic Development and Planning Department:

Matt Brown, Interim Planning Administrator  
Jonathan Lee, Planner

Chairperson Dever opened the hearing, which was followed by the swearing in of all witnesses by Mr. Brown.

The first order of business being approval of the minutes of the November 18th, 2013, Franklin County Board of Zoning Appeals hearing. Mr. Guyton made a motion to approve the minutes. It was seconded by Ms. Hunter. The minutes were approved by a four-to-zero vote.

### **NEW BUSINESS:**

The next order of business being Case No. VA-3811. The applicant is Matt Mefford/Tesla Motors. The owner is William Crawford/S&B Development. The site is located at 3445 Morse Road. The township is Mifflin Township. It is 2.835 acres. And the request is for a Variance from Sections 332.042(b) and 670.086(c)(6) of the Franklin County Zoning Resolution to allow the retail sale of automobiles on a lot that fails to meet the minimum lot width requirement and to allow a monument sign that fails to meet the minimum setback requirement on a lot subject to the Smart Growth Overlay zoned Community Service.

Mr. Jonathan Lee read and presented the case to the Franklin County Board of Zoning Appeals. Ms. Hunter made a motion to approve Case No. VA-3811. Mr. Guyton seconded the motion. The motion was approved by a four-to-zero vote.

The next order of business being the approval of the bylaws for the Franklin County Board of Zoning Appeals 2014 season. Mr. Guyton made a motion to approve the bylaws as presented. It was seconded by Chairperson Dever. The motion was approved by a four-to-zero vote.

The next order of business being the election of a Chairperson for the 2014 season. Mr. Baer nominated Gary Dever to continue as Chairperson. The nomination was seconded by Mr. Guyton. The nomination was approved by a four-to-zero vote.

The next item of business being the nomination of Vice Chairperson for the 2014 season. Mr. Guyton nominated Chris Bear to continue as Vice Chairperson. It was seconded by Chairperson Dever. The nomination was approved by a unanimous vote.

There being no further new business to come before the Board of Zoning Appeals, a motion was made by Mr. Baer to adjourn the hearing. It was seconded by Chairperson Dever.

And, thereupon, the hearing adjourned at 2:03 p.m.

Minutes of the January 21st, 2014, Board of Zoning Appeals hearing were approved this 21<sup>st</sup> day of April, 2014.

---

*Signature*



Commissioner Marilyn Brown • Commissioner Paula Brooks • Commissioner John O’Grady  
President

Economic Development & Planning Department  
James Schimmer, Director

## STAFF REPORT

Board of Zoning Appeals  
April 21, 2014

### Case VA-3812

Prepared by: Anthony Hray

<b>Applicant/Owner:</b>	Brian and Beth Warner
<b>Township:</b>	Brown Township
<b>Site:</b>	4042 Amity Road (PID #120-000791)
<b>Acreage:</b>	1.02-acres
<b>Zoning:</b>	Rural District
<b>Utilities:</b>	On-site water and wastewater
<b>Request:</b>	Requesting a Variance from Sections 512.02(2) and 650.162(a) to legitimize the expansion of an illegally constructed accessory building that fails to meet the required property line setback, exceeds the maximum size permitted and is located within the Big Darby Creek Riparian Setback in an area zoned Rural.

### Summary

The applicant is requesting a variance to legitimize the construction of an accessory building that fails to meet the required property line setback, exceeds the maximum size permitted on a lot between one (1) and two (2) acres in size and is located within the Big Darby Creek Riparian Setback. Staff recommends approval with conditions.

### Description of the Request

The subject property is located on the east side of Amity Road, approximately one-half mile north of Carter Road. The site is located within the Big Darby Creek Watershed and is entirely within the Big Darby Creek Riparian Setback. The site contains a single-family home with attached three-car garage, totaling roughly 3,000 square feet in size, constructed in 1982; an 885 square foot above ground swimming pool and free-standing deck; as well as a 168 square foot free-standing shed, all with an unknown date of construction, and an illegally constructed 1,920 square foot accessory building. The building at the time it was initially constructed in 2003 totaled approximately 1,080 square feet. According to aerial imagery, a 600 square foot expansion was constructed sometime in 2009 and a 240 square foot lean-to was completed in 2013, resulting in a total size of 1,920 square feet.

In response to an unrelated zoning complaint in December of 2013, staff discovered that the applicant had not received zoning or building plan approval for the accessory building and various other improvements made to the property. The applicant is seeking the request to legitimize the construction of the accessory building that fails to meet the required property line setback, exceeds the maximum size permitted on a lot between one (1) and two (2) acres in size and is located within the Big Darby Creek Riparian Setback. The accessory building addition and the attached lean-to structure are subject to the Big Darby Creek Riparian Setback Regulations due to the fact that the regulations went into effect on May 22, 2008 and both improvements were completed after this date.

### **Surrounding Area**

The surrounding area is zoned Rural and is comprised of low to medium density residential and agricultural land uses.

### **Comprehensive Plan**

The Brown Township Comprehensive Plan, adopted in 2005, includes two maps to guide development: a Future Land Use map and a Conservation Strategy Tiers map. The Future Land Use map designates the site as Low Density Rural Residential, allowing for 0.2 to 0.4 units per acre, and within the Darby Creek Corridor Overlay District. The Conservation Strategy Tiers map includes the site within the First Tier Conservation Areas, more specifically the Big Darby Creek Buffer Area. The plan stresses the importance of stormwater management, primarily reducing stormwater quantities and focusing on techniques to improve stormwater quality.

The Big Darby Accord Watershed Master Plan, adopted in 2006, also includes two maps to guide development: a Proposed General Land Use Map and a Conservation Strategy Map. The Proposed General Land Use Map acknowledges the existing development on site and recommends Residential Rural development with 0.2 to 0.5 dwelling units per acre and a Conservation Development Overlay requiring a minimum of 50 percent open space for new subdivisions. The Conservation Strategy Map shows the site within Tier 3 (tertiary priority for protection) which includes endangered habitat sensitive zones, proposed parks, corridors, connections and trails.

The request will comply with recommendations of both planning documents provided the applicant agrees to reduce the amount of impervious surface on site by removing the existing free-standing shed and lean-to structure, and appropriately mitigating the 600 square foot accessory building addition.

### **Staff Review**

#### Variance from Section 512.02(2):

- Accessory buildings on lots between one (1) and two (2) acres may not exceed a total size of more than 1,440 square feet and must maintain a 10 foot setback from all property lines
  - The existing accessory building's area is 1,920 square feet, 480 square feet or 33 percent larger than what is permitted
  - The existing accessory building encroaches to within 4.75 feet of the eastern property line and 9.2 feet of the northern property line according to the professional survey provided by the applicant

#### Variance from Section 650.162(a):

- Construction of buildings or structures or any kind or size are prohibited and applies to new construction only
  - A 600 square foot accessory building addition and 240 square foot attached lean-to structure were constructed illegally in 2009 and 2013, respectively.
  - This calculates to an increase in impervious surface of roughly two (2.0) percent of the total lot area.

### **Franklin County Public Health**

A representative from the Franklin County Public Health Department performed a site visit and determined that the location and size of the accessory building have had no adverse impact on the existing on-site water and wastewater system serving the residence.

### **Franklin County Engineer's Office**

The Franklin County Engineer's Office has indicated no concerns with the variance request.

## **Franklin County Drainage Engineer**

The Franklin County Drainage Engineer has indicated no concerns with the variance request.

## **Franklin Soil and Water Conservation District**

The Franklin Soil and Water Conservation District recommends the applicant mitigate the increase in impervious surface created by the 600 square foot accessory building addition by planting five (5) native trees (10-gallon size or larger) and incorporating a rain barrel or cistern system. The rain barrel or cistern system, in conjunction with the tree plantings, must be sized appropriately to fulfill the mitigation requirements of Zone 3 as defined in the Ohio Environmental Protection Agency (EPA) Big Darby Creek Watershed General Permit No.: OHCD00002. Under Zone 3, mitigation must be provided at a ratio of two (2) times the area of disturbance. In this particular case, the equivalent of 1200 square feet must be mitigated to off-set the 600 square foot addition to the accessory building that was completed in 2009. Specifications concerning the type, size and design of the system, as well as a landscaping plan, must be submitted and approved prior to the issuance of a Certificate of Zoning Compliance.

## **Staff Analysis**

### Section 650.20(a) – Variances Within Riparian Setbacks:

- The Franklin County Board of Zoning Appeals may grant a variance to Section 650 provided the following conditions are satisfied.
- 1) *In determining whether there is unnecessary hardship with respect to the use of a property or practical difficulty with respect to maintaining the riparian setback as established in this regulation, such as to justify the granting of a variance, the Board must consider the potential harm or reduction in riparian functions that may be caused by a proposed structure or use.*
  - » Provided the applicant mitigates in accordance with the recommendations of the Franklin Soil and Water Conservation District and removes the lean-to structure and free-standing shed, the 600 square foot addition to the accessory building will not cause a negative impact to the riparian setback.
- 2) *The Board may not authorize any structure in a Zoning District other than those authorized in the underlying Zoning District.*
  - » The proposed development is permitted in the underlying Rural zoning district.
- 3) *Variances are void if not implemented within one (1) year of the date of issuance.*
  - » A Certificate of Zoning Compliance may only be issued for an approved variance within the period of one (1) year from the date of final approval by the Board of Zoning Appeals. If a variance has not been used within one (1) year of its issuance, meaning there has not been active and substantial improvement to a property in accordance with a valid variance, then the variance shall expire and no work may commence without either renewing the variance or receiving a new variance approval from the Board of Zoning Appeals.

### Section 650.20(b) – Variances Within Riparian Setbacks:

- In making a determination under Section 650.20(a), the Board must consider the following, in addition to the findings required in Section 810.041 of the Franklin County Zoning Resolution.
- 1) *The native vegetation of the property.*
  - » An examination of historical aerial imagery shows that the area now occupied by the accessory building addition was previously maintained as open yard space. The attached lean-to structure however, appears to have been occupied by open yard space and a mature evergreen tree that was removed in part to provide room for the structure.
- 2) *The extent to which the requested variance impairs the flood control, erosion control, water quality protection, or other functions of the riparian setback*
  - » In coordination with the Franklin Soil and Water Conservation District, the applicant will mitigate any adverse impacts of the existing development to maintain the integrity and functionality of the riparian setback.

- 3) *Soil-disturbing activities permitted in the riparian setback through variances must minimize clearing to the extent possible and must include the use of Best Management Practices (BMPs) necessary to minimize erosion and control sediment. Prior to any soil-disturbing activity, the applicant must consult with Franklin Soil and Water.*
  - » No additional development is proposed. No additional soil disturbing activities are proposed aside from those that will be required to complete the recommended plantings and remove the existing shed and lean-to structure.
- 4) *The degree to which the presence of significant impervious cover, or smooth vegetation such as maintained lawns, in the riparian setback compromises its benefits to any waterway.*
  - » Provided the applicant agrees to reduce the amount of impervious surface, by removing the shed and lean-to structure, and complete the recommended mitigation, the riparian setback area will perform more efficiently.

Section 810.041 – Approval of Variance:

- 1) *Special circumstances and conditions exist that do not apply to other properties in the same zoning district.*
  - » The site is 1.48-acres smaller than the two and one-half (2.5) acre minimum lot size required by the Rural Zoning District. If the site complied with this requirement, the applicant would be permitted a larger accessory building in accordance with Section 512.02(02). In regard to the setback requirements of Section 512.02(2) and 650.162(a), the applicant states that he was unaware of these requirements when the accessory building was originally constructed in 2003 and subsequently enlarged in 2009 and 2013.
- 4) *A literal interpretation of the zoning resolution would deprive the applicant of rights enjoyed by other properties in the same zoning district.*
  - » A literal interpretation of the zoning resolution would deprive the applicant of rights enjoyed by other properties in the Rural Zoning District. If the site conformed to the minimum lot size requirement of two and one-half (2.5) acres required by the Rural Zoning District, an accessory building of 2,160 square feet would be permitted. In this case however, the site is non-conforming with respect to its lot size and instead allows for a maximum size of only 1,440 square feet.
- 5) *The special circumstances and conditions that apply to this property are not a result of actions taken by the applicant.*
  - » The special circumstances and conditions described above related to the size of the lot are not a result of the applicant; the applicant purchased the property after the lot had been created.
- 6) *Granting the variance will not confer on the applicant special privileges that are denied to other properties in the surrounding area.*
  - » The variances offer no exceptional privilege to the applicant compared to surrounding property owners.
- 7) *Granting the variance will not be injurious to private property or the public welfare in the surrounding area.*
  - » Provided the applicant agrees to remove the lean-to structure and free-standing shed, as well as mitigate according to the recommendations of the Franklin Soil and Water Conservation District; the remaining portion of the accessory building will cause no adverse impacts to private property or public welfare.

**Recommendation**

Staff’s recommendation is that the BZA approve a Variance from Sections 512.02(2) and 650.162(a) to legitimize the expansion of an illegally constructed accessory building that fails to meet the required property line setback, exceeds the maximum size permitted and is located within the Big Darby Creek Riparian Setback with the following conditions:

1. The applicant must apply for and receive approval of a Certificate of Zoning Compliance, for all improvements made to the site since 1995, from the Franklin County Economic Development and Planning Department and pay all applicable penalty fees associated with obtaining a Zoning Compliance after-the-fact.
2. The applicant must apply for and receive approval of all necessary permits from the Franklin County Building Department and pay all applicable penalty fees for work without a permit.
3. The applicant shall remove the attached lean-to structure and free-standing shed from the property by July 21, 2014. All other conditions shall be completed within one (1) year of the date of approval.
4. The applicant shall plant five (5) native trees, 10-gallon size or larger, in accordance with an approved landscaping plan and install a rain barrel or cistern system to mitigate the impervious area created by the accessory building addition. The applicant shall coordinate with the Franklin Soil and Water Conservation District to receive approval of the landscaping plan and the specifications concerning the type, size and design of the rain barrel or cistern system prior to the issuance of a Certificate of Zoning Compliance.

**Resolution**

For your convenience, the following is a proposed resolution:

**Proposed Resolution for Request:**

\_\_\_\_\_ moves to approve the Variance from Sections 512.02(2) and 650.162(a) to legitimize the expansion of an illegally constructed accessory building that fails to meet the required property line setback, exceeds the maximum size permitted and is located within the Big Darby Creek Riparian Setback as outlined in the request above for the applicant identified in Case No. VA-3812 with the conditions in staff’s recommendation.

Seconded by: \_\_\_\_\_

Voting:

**Findings of Fact**

For your convenience, the following are proposed findings of fact:

If the resolution fails for lack of support, the following are proposed findings of fact for adoption by the BZA:

\_\_\_\_\_ moves that the basis for denying the applicant’s request for the variance as outlined in the request above for Case No. VA-3812 results from applicant’s failure to satisfy the criteria for granting a variance under Section 810.041 and 650.20(a).

Seconded by: \_\_\_\_\_

Voting:

# Myers Surveying Company, Inc.

2740 East Main Street, Columbus 43209 (Bexley), Ohio

614-235-8677

FAX:614-235-4559

A Boundary Survey prepared for and certified to:

**Brian Warner**

**Legal Description:** Situated in The State of Ohio, County of Franklin, Township of Brown Being 1.002 Acres in Virginia Military Survey No. 1478

**Posted Address:** 4042 Amity Road (County Road 12)

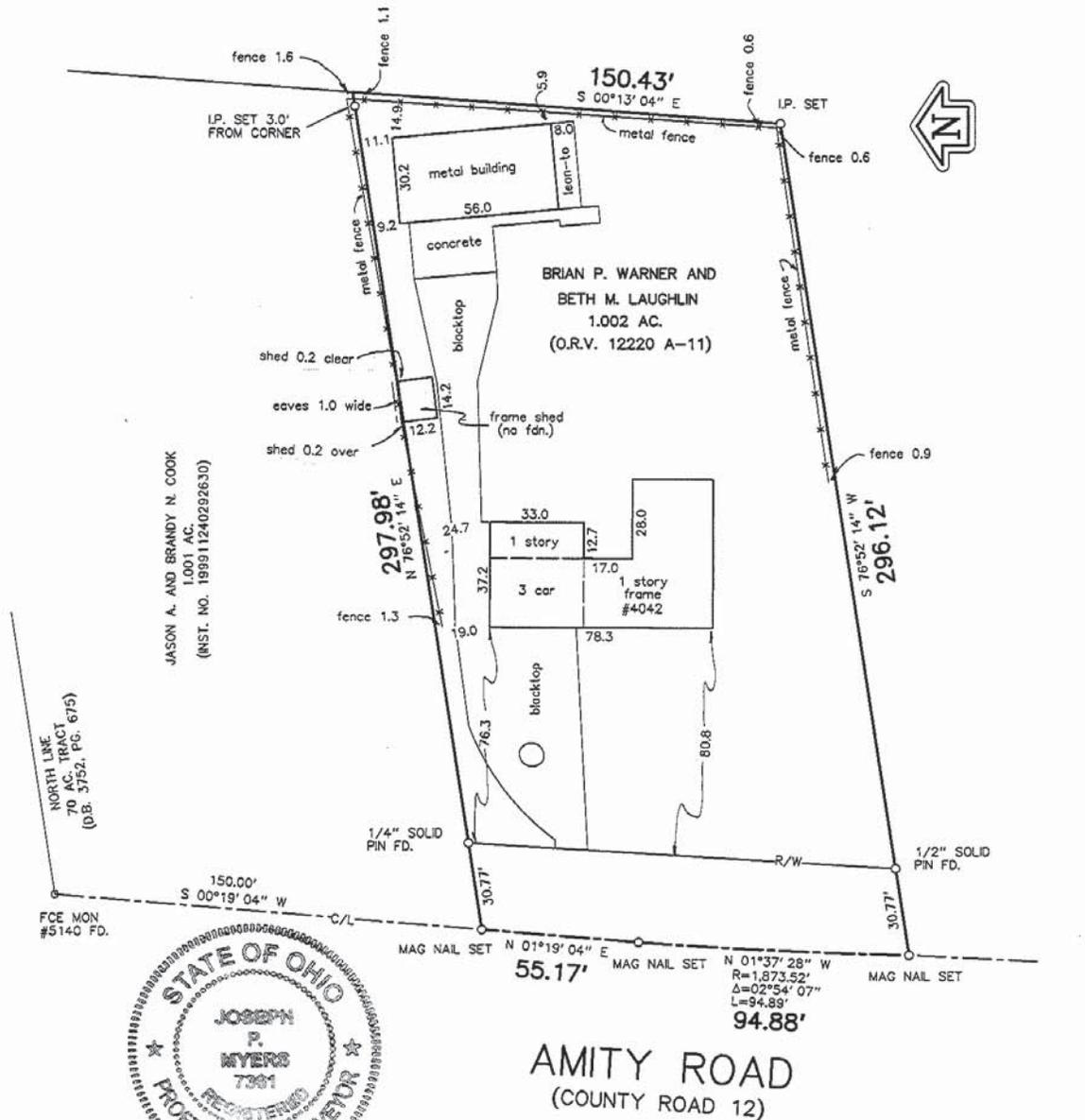
VA-3812

2.24.14



Scale 1" = 50'  
Date: 02/21/2014

KAREN L. MURRAY-SMITH AND ALAN SMITH  
6.596 AC.  
(INST. NO. 2D0702160028641)



JASON A. AND BRANDY N. COOK  
1.001 AC.  
(INST. NO. 199911240292630)

NORTH LINE  
70 AC. TRACT  
(O.B. 3752, PG. 675)

FCE MON  
#5140 FD.



AMITY ROAD  
(COUNTY ROAD 12)

We hereby certify that the foregoing Boundary Survey was prepared from actual field measurements in accordance with Chapter 4733-37 Ohio Administrative Code. Iron pipes set are 30"x1" O.D. with an orange plastic plug inscribed "P.S. 6579", unless otherwise noted. Basis of bearings is the centerline of Amity Road held as South 00° 19' 04" West per O.R.V. 12220 A-11.

Myers Surveying Co., Inc.

By *[Signature]*

Professional Surveyor

Myers Order No. - 3-01/30/2014



201401303

Rec.	Field	DWG	Ltr.	Ck.
CA	RON	DJO	DJO	

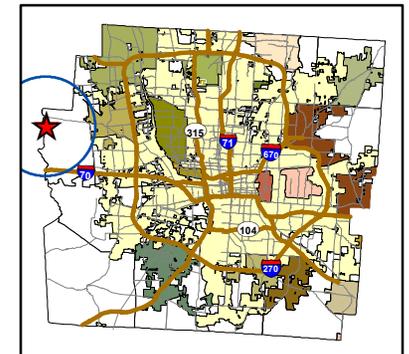


# VA-3812

Requesting a Variance from Sections 512.02(2) and 650.162(a) to legitimize the expansion of an illegally constructed accessory building that fails to meet the required property line setback, exceeds the maximum size permitted and is located within the Big Darby Creek Riparian Setback in an area zoned Rural.

1 acre  
Brown Township

-  4042 Amity Rd.
-  Parcels
-  Streets
-  Big Darby Creek Setbacks
- County Zoning**
-  Rural
- Franklin County Floodplain**
-  Floodway Fringe
-  Floodway



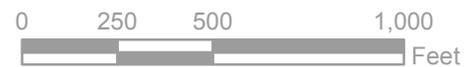
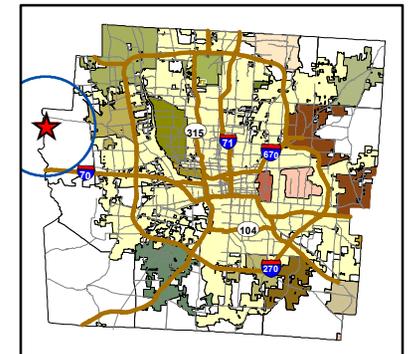


# VA-3812

Requesting a Variance from Sections 512.02(2) and 650.162(a) to legitimize the expansion of an illegally constructed accessory building that fails to meet the required property line setback, exceeds the maximum size permitted and is located within the Big Darby Creek Riparian Setback in an area zoned Rural.

1 acre  
Brown Township

-  4042 Amity Rd.
-  Parcels
-  Streets
-  Big Darby Creek Setbacks
- Franklin County Floodplain**
-  Floodway Fringe
-  Floodway





# VA-3812

Requesting a Variance from Sections 512.02(2) and 650.162(a) to legitimize the expansion of an illegally constructed accessory building that fails to meet the required property line setback, exceeds the maximum size permitted and is located within the Big Darby Creek Riparian Setback in an area zoned Rural.

1 acre  
Brown Township

- 4042 Amity Rd.
  - 30' x 56' Accessory Building
  - 30' x 8' Lean-to
  - Parcels
  - Streets
  - Big Darby Creek Setbacks
- Franklin County Floodplain**
- Floodway Fringe
  - Floodway

