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The Madison County Board of Zoning Appeals met on the above date at 9:00 A.M. with Chairman John Simmermon presiding.

Members Present: John Simmermon, Curt Stephenson, Jerry Stamm, and Lindsay Brown

Members Absent: Kelly Salyer

Staff Present: Larry Strange - Director, Stacey Hinton - Secretary, and Jeff Graham County Attorney

CURRENT BUSINESS

1. Prayer – John Simmermon
2. Pledge of Allegiance
3. Roll Call – 3 Present and 2 vacant seats
4. Minutes will be tabled until the July meeting

New Business

1. Petition: APPEAL
Address: 483 East 1100 North, Alexandria
Location: Monroe Township, District 3 Commissioner
Petitioner: Brad Boyer
Landowners: Brad Boyer
Zoning: CR
Request: BZA Administrative Appeal to Director Strange’s ruling that Mr. Boyer is running a milk tanker business and is in violation of our Zoning Ordinance

Attorney Graham explained how the hearing will go. He stated that an Administrative Appeal is an appeal that each affect landowner is entitled to based on a decision made by our director. You want to hear evidence, written and oral, and otherwise given people an opportunity to reply, rebut evidence, things of that nature.

The order of business would be best if Larry can briefly describe the decision that is being appealed. Give opportunity to counsel for the petitioner to explain his position as to why the decision by our planning director was improper. Once that is done, then we can invite public comment. We have received one written document that was submitted as part of the record. The board is conducting a mini appeal and they are the applet board over a decision made by Mr. Strange, our planning director.

The board will either uphold his decision with Findings of Fact, overturn his decision with Findings of Fact or Continue this to another hearing to hear additional evidence. No strict rules of evidence or anything of that nature. The board can ask questions and Attorney Graham recommends that we give each side an opportunity to rebut or even ask questions.

Director Strange wanted to point out two things. This administrative appeal is in our code under section 11.13 - Administrative Appeals, under C, C:

The approval of an administrative appeal may be terminated by the Board of Zoning Appeals under the following procedure:

And under D:

If an administrative appeal is granted, the Board may refund any application fees which have been paid to the County by the applicant in petitioning for the appeal. In no way shall this provision be interpreted as providing the applicant with the ability to seek the refund of any other fees or costs associated with the appeal or the application which is the subject of the appeal.

Director Strange gave the overview of the appeal and read it from his notes. He stated the following:

The complaint was received in this office on 5-13-2022 [about 14 months ago] about parking semi-trailers overnight at a residence at 483 E 1100 N in Alexandria. The property is approximately 15 acres with a residence and a large parking area. The property is zoned Conservation Residential (CR).

The situation was brought to my attention in fall of 2022. As I understood it, the activity involved parking of semi-trucks and trailers at Mr. Boyer's home as a parking station for trucks carrying milk from Ohio to locations in the Midwest. He said he works as a truck driver for the company and allows them to use his property as a waystation. No milk production or agricultural activity occurs on the property. Mr. Boyer has been totally up front with him about everything that is going on. Mr. Boyer hasn't been trying to slide one under the rug. Everything has been up front, and he wanted to state that.

After he initially heard the information and then reviewed it, he determined that this use was a transportation function - tractor-trailer storage or parking as a component of a cross-country transportation operation, and that the property (currently zoned Conservation Residential) would need to be rezoned to either "truck stop" or "light industrial" to accommodate the use.

This office contacted Mr. Boyer and advised him of the situation. He met with me and asked whether a "variance" he had received in 1998 to operate an excavation business would be adequate to allow him to operate. Under our current zoning code, this type of application would be filed as a special use and would not be permissible in the current zoning district. Because there is no evidence of any type of excavation with the proposed use and that the type of business for which the variance was applied for did not exist, I determined the variance he had been granted not to be relevant to this situation. He did put a copy of the variance in their packets.

Mr. Boyer also suggested that as this was a farming operation and that this should be allowed. He did ask him, and he said there was no agricultural activity on his property associated with this activity - his site was serving as parking for the company he worked for, and that this activity was a business/transportation function.

He sent an email on January 11, 2023, that he stated that Mr. Boyer had until the end of that month to make a decision on whether to rezone the property. He tried to work closely with Mr. Boyer to give him time to work out his situation with his employer and figure out options that he may have. In February, we initiated our enforcement process (warning letter – 30 days to comply; \$100 fine – 30 days to comply; and \$500 fine – 30 days to comply). On March 6, 2023, a letter was sent with the \$500 fine notice. That letter is attached. Neither fine has been

paid. This office has worked for months with Mr. Boyer and given him ample time to address his situation.

In April, Mr. Boyer's attorney stopped in the office and generally pursued the same line of discussion we'd had earlier with Mr. Boyer, looking at whether this operation could be considered agricultural and thus be permitted in the Conservation Zoning district. I discussed my position and said that if they disagreed, they could appeal my decision. He put some other information in the handouts.

In conclusion, the permitted uses section of the code requirements for the commercial residential district imply that the focus of agriculture uses is for production and storage of crops produced on site. As stated earlier, my interpretation of the codes is that the existing use on Mr. Boyer's property is a transportation function, not an agricultural function. He never saw and been told that there was any type of agricultural building or activity or anything on the property. It is a residence. In addition to the original complaint, there have been additional complaints about the operation. One with 14 signatures attached from residents in the area.

There was discussion between Chairman Simmermon and Director Strange regarding the zoning requirements. It shows all the special uses and there is not a special use even permitted for what he is doing. Director Strange stated that in his opinion he has to be rezoned and he told him that and he told them the options. And there are options for rezoning. He doesn't have to shut down, there are administrative options to pursue.

Attorney Graham indicated to Director Strange that he mentioned a in his report a couple of times that he determined that the use was a transportation function-tractor-trailer storage or parking as a component of a cross-country transportation operation. He asked if he could provide the board with what facts he used, or observation or evidence you used to make that determination. Director Strange explained how he came to that determination. He stated that Mr. Boyer told him he is a truck driver for a company out of Ohio and that they haul milk to the Midwest, and they use his property for a storage place. He stated the facts he used was that they haul milk from Ohio to Nebraska stopping in Alexandria. There is not farm, no agriculture produced, and no milk being produced from this location. Discussion was had among board members and Director Strange.

Attorney Devin Norrick, who is representing Mr. Boyer, spoke to the board members. He stated that this isn't about whether or not a special use could be used for this. He believes a permitted use that would apply under this section is a storage of farming implements. He stated that nowhere under Madison County's code does it require that it has to be his [Mr. Boyer's] farm operation. Mr. Boyer does farm his own ground, he does have farming equipment at that property, and he does have land he farms. Attorney Norrick stated that farm implemented storage is a permitted use for Conservation Residential and that milk is a farm product. Milk tankers are a farming implement. The company is AG exempt almost the entire year. Attorney Norrick believes because those milk tankers are used directly for farm operation out-product that it should be considered a permitted use.

Chairman Simmermon asked if the semi-trailers have AG plates? Mr. Boyer stated no they do not. Chairman Simmermon stated that all, if not most of all farmers, have AG exempt plates. He feels Mr. Boyer's trucks are commercial trucks. Mr. Boyer stated that the AG exemption goes from March 1 through December 1st. Chairman Simmermon asked what they were exempt from? Mr. Boyer stated that they are exempt from logbooks during that time, they are allowed 88000 just like farmers in the State of Indiana. Further discussion was had among board members, petitioner and petitioner's attorney. Mr. Boyer did clarify that the road was 1100 North not State Road 128.

Member Brown asked if Mr. Norrick was tying this into Agriculture saying that because it has milk on it and it's a tanker that carries milk, that its farm equipment? Mr. Norrick stated yes. He took that direct from definition of what farm implement was. Definition of farming implements are equipment, machinery, and tools for use in connection with the production or preparation for market use of agriculture or livestock products. Milk is a director product of cows. They pick up the milk from the dairy farm, take that milk to the way point and then takes the milk to the production facility. He also states that the milk is transported all in the same day.

Attorney Graham asked if this was a year-round business and that either one of them [Mr. Boyer or Attorney Norrick] could answer. Mr. Boyer said yes it was. Attorney Graham then had a question for Attorney Norrick. Definition by Law Insider defines it as: *means a vehicle designed and adapted exclusively for agricultural, horticultural or livestock-raising operations and which is not operated on a highway for transporting a pay load or for any other commercial purpose.* If we adopted that definition, that would be the end, right? Attorney Norrick said he did not believe so because that would take away all the abilities for farmers to drive on a highway then to get AG exempt status. Discussion was had between attorney's regarding the definition along with other questions between attorneys regarding the operation and hauling products. Attorney Norrick stated that Mr. Boyer is asking for the fines to be waived.

Chairman Simmermon opened it up for public comments. Remonstrators were present and spoke.

After public comment, Director Strange indicated that our code does not address every single situation that could possibly exist. With a situation like with this, its not adequately defined, by the county code, the director can interrupt the code and make the recommendations he feels fit. The permitted uses and the over all background of conservation residential district, regardless of implements, he counted 4 times it continually talks about retail sales of crop, crops produced on sites, stuff produced on sites. Conservation Residential is looking at farming operations that are dealing with stuff produced on site. The final thing is the issue of the truck stop or whether it's light industrial. There is a piece in light industrial that covers RV and boat storage. Discussion was had between Director Strange and Director Strange regarding the definition and storage. Discussion was had again between attorneys again regarding storage.

Attorney Graham explained to the board they can either approve or deny. If you approve, there must be Findings of Fact. The fines are absolutely at the discretion of the board. Director Strange he is fine with waiving the fines.

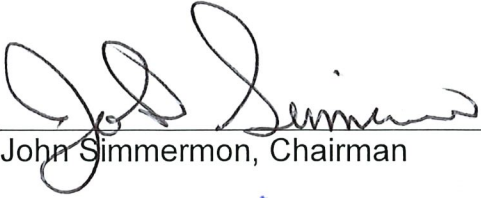
Member Brown made a motion to uphold the Planning Director's decision along with the adoption of the farm implement from Law Insider and to waive all fines.

Farm Implement: means a vehicle designed and adapted exclusively for agricultural, horticultural or livestock-raising operations and which is not operated on a highway for transporting a pay load or for any other commercial purpose.

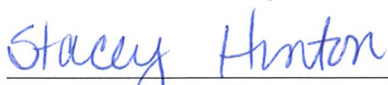
Seconded by Member Stephenson. Roll call vote taken and was unanimous. **Motion Approved with adoption of the definition of Farm Implement and waive of all fines.**

Adjournment

Chairman Simmermon adjourned the meeting at 10:01.



John Simmermon, Chairman



Stacey Hinton, Board Secretary