

BZA - Minutes February 27, 2024 Board Meeting

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

Members Present: Chairman - John Simmermon, Jerry Stamm, Kelly Salyer and Lindsay Brown (via teams meet)

Members Absent: Curt Stephenson

Staff Present: Larry Strange - Director, Nikki Wood – Board Secretary, and Jeff Graham - County Attorney

CURRENT BUSINESS

1. Prayer – John Simmermon
2. Pledge of Allegiance
3. Roll Call – 4 present, 1 absent
4. Member Stamm made a motion to approve the January 23, 2024 Board Minutes, seconded by Member Salyer. Voice call was unanimously approved. **Motion Approved**

New Business

1. Petition: 2023-SU-012
Address: 56 N 500 W
Location: Stony Creek Township
Petitioner: Joaquin Morales
Landowners: Joaquin Morales
Zoning: AG
Request: Operate construction company from residence

Director Strange read a letter from a remonstrator not in favor of this project. At the Planning Commission meeting there was a remonstrator that spoke in favor of this project. The petitioner is requesting a special use to operate a small construction business from the property where he also resides. Director Strange presented the staff report with a favorable recommendation with the condition that dumpsters must be concealed by fencing or landscaping and shipping container type dumpsters are prohibited. Member Stamm made a motion to approve 2023-SU-012, seconded by Member Salyer. Roll call vote was unanimous. **Motion approved**

FINDINGS of FACT for SPECIAL USE

1. *Would the approval be injurious to the public health, safety, morals, and general welfare of the community?* No. The project is such that there should be no negative impact on the general welfare of the community.
2. *Will the requirements and development standards set forth in the district for such exception be met?* Yes. As presented, the existing improvements on the property meet the standards of the Madison County Land Use Development Code. All future improvements will be subject to the applicable development standards.

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- 3. Will the proposed use subvert and permanently injure other property or uses in the same district and vicinity?** No. As presented, and assuming the conditions detailed herein are met, no injury will occur to surrounding properties in the same district and vicinity.
- 4. Will the proposed use be consistent with the character of the zoning district and the Comprehensive (Comp) Plan?** Yes. As presented, the conditions and the nature of the petition are consistent with the zoning code and comprehensive plan.

- Petition: 2024-V-006
Address: 56 N 500 W
Location: Stony Creek Township
Petitioner: Joaquin Morales
Landowners: Joaquin Morales
Zoning: AG
Request: Keep horse on property less than 4 acres

Director Strange explained the petitioner has 3.7 acres and the minimum size requirement is 4 acres for farm animals. The owner has had the animals on the property for some time with no apparent problem. Staff recommendation is to approve the variance. Member Simmermon confirmed there are 3 horses on the property. Member Stamm questioned how much of the property is for the business and how much for the horses. Attorney Cook, representing the petitioner, answered with 2000 square foot or less for the animals. Member Stamm made a motion to approve 2024-V-006, seconded by Member Salyer. Roll call vote was unanimous. **Motion approved**

FINDINGS of FACT for VARIANCE

- 1. WILL the approval be injurious to the public health, safety, morals, and general welfare of the community?** No. The proposed use as presented should not negatively impact the public health, safety, morals, and general welfare of the community.
- 2. Will the use and value of the area adjacent to the property included in the variance be affected in a substantially adverse manner?** No, there should be no such impact. The lot is unique in that it is larger than most lots in the subdivision.
- 3. Will the strict application of the terms of the zoning ordinance result in a practical difficulty in the use of the property.** Yes. The owner seeks security and privacy and enforcement of the ordinance will make this difficult.

- Petition: 2024-SU-001
Address: 0 SR 38
Location: Adams Township
Petitioner: Bret Swinford
Landowners: Bret Swinford
Zoning: CR
Request: Accessory Structure before Primary Structure

Director Strange presented the staff report. The BZA requires a covenant that the home will be started in 2 years and there will be no business activity from the accessory structure. Staff recommendation is to approve and if approved, the staff will work with the petitioner to produce the required covenant. The petitioner spoke. Member Simmermon asked the petitioner if he saw any problems with starting the project in 2 years, finishing in 3 years. The Petitioner sees no

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problem with this time frame. Member Salyer made a motion to approve 2024-SU-001, seconded by Member Stamm. Roll call vote was unanimous. **Motion approved**

FINDINGS of FACT for SPECIAL USE

1. *Would the approval be injurious to the public health, safety, morals, and general welfare of the community?* No. The project is such that there should be no negative impact on the general welfare of the community.
 2. *Will the requirements and development standards set forth in the district for such exception be met?* Yes. As presented, the existing improvements on the property meet the standards of the Madison County Land Use Development Code. All future improvements will be subject to the applicable development standards.
 3. *Will the proposed use subvert and permanently injure other property or uses in the same district and vicinity?* No. As presented, and assuming the conditions detailed herein are met, no injury will occur to surrounding properties in the same district and vicinity.
 4. *Will the proposed use be consistent with the character of the zoning district and the Comprehensive (Comp) Plan?* Yes. As presented, the conditions and the nature of the petition are consistent with the zoning code and comprehensive plan.
4. Petition: 2024-SU-002
Address: 0 E 360 N
Location: Richland Township
Petitioner: John Bowen
Landowners: John & Melissa Bowen
Zoning: CR
Request: Commercial greenhouse

Director Strange presented the staff report and noted we do not have an agritourism section in our code right now but that will be looked at. A summary of requests:

- 1) Bringing Family Heritage Back to Anderson
- 2) Low-Cost Wholesome Family Adventures
- 3) Great education to local community
- 4) Greenhouse
- 5) You-pick flower patch
- 6) Butterfly house
- 7) Garden tours
- 8) Haunted Halloween Trails
- 9) Christmas at the Homestead
- 10) Bird Watching Events
- 11) Pumpkin patch (future)
- 12) Petting zoo (future)
- 13) Event center (future)

Staff recommendation is to approve items 1 through 10 with a condition that items 11, 12, and 13 require approval from the BZA prior to implementation. Member Stamm questioned drainage and roads. No traffic analysis was done. Petitioner John spoke in regard to traffic and plans for project. Remonstrators spoke with traffic concerns; the street isn't wide enough for semis. Director Strange mentioned possible need for a variance for the driveway. Petitioner Melissa stated the shipments she expects to have will be through Fedex or UPS not anything that will require a semi. Member Brown questioned the possibility of a traffic study due to the road being so narrow. Director Strange and the County Engineer agree that there shouldn't be more traffic than a typical day and any traffic issues will possibly occur when items 11, 12 and 13 are in effect. A traffic study could be done prior to implementing those items. Member Brown question 8 and 9 as well

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as far as traffic is concerned. Member Simmermon asked for more explanation on items 8 and 9 and how many people they estimate to have at a time. Petitioner Melissa explained that with only a 20-car parking lot, they don't expect large crowds. She plans to be small scale. Attorney Graham stated it may be worthwhile for the petitioners to provide a proposal of how the events would operate to alleviate the neighbors' concerns and would give future staff a better idea of what was approved. Member Stamm made a motion to approve petition 2024-SU-002 items 1-7 and 10. Attorney Graham reiterated we'll invite them to come back for items 8 and 9 and notices will be sent. Member Stamm amended his motion to include the petitioners coming back with a site plan on using the property and an agenda on how they will take care of the property. Roll call was unanimous. **Motion approved.**

FINDINGS of FACT for SPECIAL USE

1. **Would the approval be injurious to the public health, safety, morals, and general welfare of the community?** No. The project is such that there should be no negative impact on the general welfare of the community.
 2. **Will the requirements and development standards set forth in the district for such exception be met?** Yes. As presented, the existing improvements on the property meet the standards of the Madison County Land Use Development Code. All future improvements will be subject to the applicable development standards.
 3. **Will the proposed use subvert and permanently injure other property or uses in the same district and vicinity?** No. As presented, and assuming the conditions detailed herein are met, no injury will occur to surrounding properties in the same district and vicinity.
 4. **Will the proposed use be consistent with the character of the zoning district and the Comprehensive (Comp) Plan?** Yes. As presented, the conditions and the nature of the petition are consistent with the zoning code and comprehensive plan.
5. Petition: 2024-SU-003
Address: 3708 N State Road 9
Location: Richland Township
Petitioner: Gregory Nemeth
Landowners: Jon Carnahan
Zoning: GC
Request: Run an auto dealership

Director Strange presented the staff report and states this special use "runs" with the owner and if the owner sells the special use goes away. Staff recommendation is to approve with the condition that the residential activity must cease as of March 31, 2024 unless a special use is applied for. If the space is used for offices, a special use isn't needed. The petitioner spoke and intends to purchase the property with the plan of continuing residential use. Member Salyer made a motion to approve petition 2024-SU-003, seconded by Member Stamm. Roll call was unanimous. **Motion approved**

FINDINGS of FACT for SPECIAL USE

1. **Would the approval be injurious to the public health, safety, morals, and general welfare of the community?** No. The project is such that there should be no negative impact on the general welfare of the community.
2. **Will the requirements and development standards set forth in the district for such exception be met?** Yes. As presented, the existing improvements on the property meet the standards of the Madison County Land Use Development Code. All future improvements will be subject to the applicable development standards.
3. **Will the proposed use subvert and permanently injure other property or uses in the same district and vicinity?** No. As presented, and assuming the conditions detailed herein are met, no injury will occur to surrounding properties in the same district and vicinity.

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4. *Will the proposed use be consistent with the character of the zoning district and the Comprehensive (Comp) Plan?* Yes. As presented, the conditions and the nature of the petition are consistent with the zoning code and comprehensive plan.

6. Petition: 2024-V-001
Address: 9125 West Fall Creek Drive
Location: Green Township
Petitioner: Douglas & Lori Score
Landowners: DLS Holding LLC
Zoning: CR
Request: East front yard setback relief

Director Strange explained the petitioner was approved in 2021 for 5 variances and why petitions 2024-V-003 and 2024-V-005 were withdrawn. Director Strange presented the staff report. Staff recommendation is to approve with three conditions. 1) the barn must be the same color as the exterior of the house; 2) the barn must have the appearance of a single-family dwelling on the north and east sides; and 3) the lowest floor must be 2 feet above the base flood elevation. The petitioners spoke and had discussion with Member Simmermon. Member Simmermon confirmed they are approving a variance that was previously approved and has no changes. Member Stamm made a motion to approve petition 24-V-001, seconded by Member Salyer. Roll call was unanimous. **Motion approved**

FINDINGS of FACT

1. *Will the approval be injurious to the public health, safety, morals, and general welfare of the community?* No. The approval of the variance would allow an accessory structure to be built fifty feet from the right-of-way of State Road 13. An accessory structure in this location will not have an injurious effect to the public health, safety, morals, and general welfare of the community.
2. *Will the use and value of the area adjacent to the property included in the variance be affected in a substantially adverse manner?* No, assuming the BZA required conditions are met, the accessory structure will not affect the surrounding area in a substantially adverse manner, as the building resulting from the compliance will sufficiently offset any negative consequences from a structure that is 50' from the right-of-way.
3. *Will the strict application of the terms of the zoning ordinance result in a practical difficulty in the permitted use of the property?* Yes, limitations created by the SFHA when combined with the restrictions required by a strict reading of the Zoning Ordinance, would create a practical difficulty in permitting the use of the property in an agricultural manner.

7. Petition: 2024-V-002
Address: 9125 West Fall Creek Drive
Location: Green Township
Petitioner: Douglas & Lori Score
Landowners: DLS Holding LLC
Zoning: CR
Request: North front yard setback relief

Director Strange presented the staff report with the same recommendation of approval and conditions above which are 1) the barn must be the same color as the exterior of the house; 2) the barn must have the appearance of a single-family dwelling on the north and east sides; and 3) the lowest floor must be 2 feet above the base flood elevation. Member Stamm made a motion to

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approve petition 24-V-002, seconded by Member Salyer. Roll call was unanimous. **Motion approved**

FINDINGS of FACT

1. *Will the approval be injurious to the public health, safety, morals, and general welfare of the community?* No. An accessory structure in this location is sufficiently distant from the road to not have an injurious effect to the public health, safety, morals, and general welfare of the community.
 2. *Will the use and value of the area adjacent to the property included in the variance be affected in a substantially adverse manner?* No, assuming the BZA required conditions are met, the accessory structure will not affect the surrounding area in a substantially adverse manner, as the building resulting from the compliance will sufficiently offset any negative consequences from a structure that is 30' from the right-of-way.
 3. *Will the strict application of the terms of the zoning ordinance result in a practical difficulty in the permitted use of the property?* Yes, limitations created by the SFHA when combined with the restrictions required by a strict reading of the Zoning Ordinance, would create a practical difficulty in permitting the use of the property in an agricultural manner.
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8. Petition: 2024-V-003 **Withdrawn**
Address: 9125 West Fall Creek Drive
Location: Green Township
Petitioner: Douglas & Lori Score
Landowners: DLS Holding LLC
Zoning: CR
Request: Accessory structure height relief
 9. Petition: 2024-V-004
Address: 9125 West Fall Creek Drive
Location: Green Township
Petitioner: Douglas & Lori Score
Landowners: DLS Holding LLC
Zoning: CR
Request: Fence in front yard

Fences in front yard in AG district is not allowed. Director Strange spoke to the petitioner prior to today's meeting about the design of the fence and placed a condition that prior to building the fence, the planning department must approve the design of the fence based on the code. After presentation of the staff report conditions, Member Brown asked if the fence conditions go with the house if the property is sold which Director Strange answered yes. Member Simmermon requested to keep the 2021 conditions that 1) the fence must be built of quality material; 2) the fence must be maintained (broken fence is to be repaired within 30 days; decay or rot is to be removed and replaced immediately, etc.); 3) the Plan Commission will have the right to treat the lack of maintenance or the rot and decay of the fence as a violation, if not repaired or replaced in a reasonable amount of time; 4) the fence may not be a chain link fence; and 5) the fence may not be opaque. Member Stamm made a motion to approve 2024-V-004, seconded by Member Salyer. Roll call was unanimous. **Motion approved**

FINDINGS of FACT

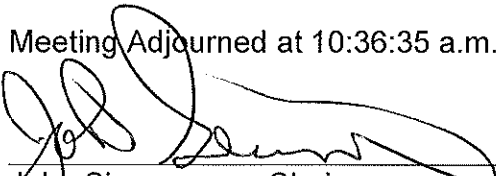
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1. **Will the approval be injurious to the public health, safety, morals, and general welfare of the community?** No. The approval of the variance would allow a fence to be built in the front yard of the subject parcel. Although front yard fences are scarce in the general vicinity, allowing a fence in the front yard will not have an injurious effect to the public health, safety, morals, and general welfare of the community.
 2. **Will the use and value of the area adjacent to the property included in the variance be affected in a substantially adverse manner?** No. The approval of the variance would allow a fence in the front yard of the subject parcel. If the fence is constructed of a quality material that blends with the aesthetics of the general vicinity, the use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner. A fence already exists along State Road 13 as is typical in locations where the topography immediately adjacent to a major thoroughfare is considerably lower than the road.
 3. **Will the strict application of the terms of the zoning ordinance result in a practical difficulty in the permitted use of the property?** Yes. The property is mostly in an SFHA. Placing a fence in the SFHA requires numerous hurdles and is typically placed specifically for agricultural purposes. To place a fence on this property for residential purposes is somewhat limited. The area of the property in which a residential use may be utilized is directly east of the existing home, which is in the front yard, as the home has two front yards. Not being able to place a fence in this location could certainly hinder the safety and security of children and pets, both of which are staples of a residential use. The reasonable safety and security of one's family and pets are necessary to maintain a residential use. So, the strict application of the terms of the zoning ordinance will result in a practical difficulty in the permitted use of the property.
10. Petition: 2024-V-005 **Withdrawn**
Address: 9125 West Fall Creek Drive
Location: Green Township
Petitioner: Douglas & Lori Score
Landowners: DLS Holding LLC
Zoning: CR
Request: Accessory structure in front of primary structure

Miscellaneous

Adjournment

Meeting Adjourned at 10:36:35 a.m.



John Simmermon, Chairman



Nikki Wood, Board Secretary