

## **BZA - Minutes April 23, 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

Members Absent: Vice Chairman – 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 – Curt Stephenson
4. Member Stamm made a motion to approve the March 26, 2024 Board Minutes, seconded by Member Salyer. Voice call was unanimous. **Motion Approved**

### **New Business**

Prior to presenting the first petition, Director Strange wanted to review what practical difficulty means which is key when dealing with variances. The definition of practical difficulty per our code is "... a difficulty with the regard to one's ability to improve land stemming from regulations of the Zoning Ordinance. Practical difficulty is not a hardship, rather it is a situation where the owner could comply with the regulations within the Zoning Ordinance but would like a variance from the Development Standards to improve his site in a practical manner. For instance, a person may request a variance from a side yard setback due to a large tree which is blocking the only location that would meet the Development Standards for a new garage location." Director Strange mentions practical difficulties cannot be decided based on cost. Attorney Graham added that the factors you can use that are acceptable is whether the injury is self-created and if there is a feasible alternative. If so, there is no practical difficulty.

1. Petition: 24-SU-005  
Address: 3708 N State Road 9  
Location: Richland Township  
Petitioner: Jon Carnahan  
Land Owners: Jon Carnahan  
Zoning: GC  
Request: Residential apartment in GC

Director Strange presented the staff report for petition 24-SU-005 with staff recommendation to approve with no conditions. Wesley Garrett, representative for Mr. Carnahan briefly explained the current use of the building is one apartment and one office above the garage with no plans of changing. Member Brown made a motion to approve 2024-SU-005 as presented, seconded by Member Stamm. Roll call was unanimous. **Motion approved**

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**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. There have been no complaints about the property and there should be no negative impacts under this category.
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 that 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 proposed operation are consistent with the zoning code and comprehensive plan.

2. Petition: 24-V-009  
Address: 8536 W 8<sup>th</sup> Street Road  
Location: Jackson Township  
Petitioner: Josh Miller  
Land Owners: Richard Smith Farms  
Zoning: AG  
Request: Front yard setback relief

Director Strange presented the staff report for petition 24-V-009 with a staff recommendation to approve with a condition that the barn should compliment the house. Petitioner spoke and answered questions. Member Brown made a motion to approve petition 24-V-009 as presented with the condition that the barn compliments the primary structure, seconded by Member Stamm. Roll call 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.
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 petitioner would not be able to do the project.

3. Petition: 24-V-010  
Address: 0 E 360 N 48-07-29-400-001.001-029  
Location: Richland Township  
Petitioner: John & Melissa Bowen  
Land Owners: John & Melissa Bowen  
Zoning: CR  
Request: Relief of distance between driveways

Director Strange presented the staff report for petition 24-V-010 with a staff recommendation to approve. The Highway Department reviewed the application and they have no issues. One neighbor came to the Planning Department that didn't think it was appropriate spacing between driveways but did not register his opposition. Mr. Bowen explained the location of the proposed driveway is the only place without a 3-4 foot drop off. Member Brown made a

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motion to approve petition 24-V-010 as presented, seconded by Member Stamm. Roll call 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.
  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 topography of the property presents difficulty in locating the driveway due to the steep drop off.
4. Petition: 24-V-011  
Address: 391 E State Road 28  
Location: Monroe Township  
Petitioner: Robert Shaver II  
Land Owners: Robert Shaver II  
Zoning: CR  
Request: Side yard setback relief

Director Strange presented the staff report for 24-V-011 with the staff recommendation to approve this variance to allow a side yard setback of 6 feet rather than the required 10 feet. Mr. Shaver gave his reasons for the placement of the proposed garage. There was discussion between the board and the petitioner. The firewall was brought up for Mr. Shaver's 24-V-012 variance. Mr. Shaver stated there will be 5 feet between buildings. There was discussion about firewalls and building codes and Director Strange stated we follow Indiana building codes. Chairman Simmermon wanted confirmation they weren't going around fire code if this was approved to which Director Strange read the condition he placed that "...a fire wall and any other construction requirements specified by the Indiana Building Code shall be installed as part of this project." Member Stamm made a motion to accept 24-V-011 along with the findings of fact, seconded by Member Salyer. Roll call 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.
  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 presence of a favored tree and the overall layout of the lot restricts the options for using the property.
5. Petition: 24-V-012  
Address: 391 E State Road 28  
Location: Monroe Township  
Petitioner: Robert Shaver II  
Land Owners: Robert Shaver II  
Zoning: CR  
Request: Build less than the minimum 10' distance between structures

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Director Strange presented the staff report for 24-V-012 with the staff recommendation to approve this variance with the condition that a fire wall and any other construction requirements specified by the Indiana Building Code shall be installed as part of this project. Member Stamm made a motion to accept 24-V-012 along with the staff findings of fact and recommendations, seconded by Member Brown. Roll call 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.
  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 presence of a favored tree and the overall layout of the lot restricts the options for using the property.
6. Petition: 24-V-013  
Address: 3807 S 600 W  
Location: Stony Creek Township  
Petitioner: Michael & Billie Miller  
Land Owners: Michael & Billie Miller  
Zoning: AG  
Request: Side yard setback relief

Director Strange presented the staff report for 24-V-013 and mentions there are options the petitioner could do and still meet the 25 foot setback. There was discussion about the land surrounding this property. Director Strange states from a planning standpoint, the setbacks were put in place and as much as possible we should try to adhere to it particularly where there is no pattern for something different in the area. The petitioners spoke. Mrs. Miller states the neighbor to the north gave them a letter in support of where they plan to build. They explained their reasons for the placement of the barn. There was discussion between the board members and the petitioners about the traffic on 600 East and dangers of backing out onto 600 East. Part of the petitioner's plan with the barn is a driveway large enough to turn around so they don't continue to back out onto 600 East. Member Brown made a motion to approve 24-V-013 and do not accept findings of facts as presented and will amend finding 3 as a safety hazard and we accept the first 2, seconded by Member Stamm. Roll call 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?*** There could be negative impact in the future as the area develops residentially.
  3. ***Will the strict application of the terms of the zoning ordinance result in practical difficulty in the use of the property.*** No, the geometric configuration of this property represents a practical difficulty particularly related to safety issues associated with County Road 600 W.
7. Petition: 24-V-014  
Address: 1582 E 1700 N

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Location: Van Buren Township  
Petitioner: Elizabeth Cantwell  
Land Owners: Elizabeth Cantwell  
Zoning: CR  
Request: Side yard setback relief

Director Strange presented the staff report for 24-V-014 with a staff recommendation to approve this variance with no conditions. There was discussion between the board members and Director Strange about the property and garage placement. The petitioner didn't have anything to add but answered some questions from the board. Member Stamm made a motion to approve 24-V-014 with staff recommendations and findings of fact, seconded by Member Salyer. Roll call 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?*** There should be no negative impacts on property value as this variance is not creating/adding to a problem.
  3. ***Will the strict application of the terms of the zoning ordinance result in practical difficulty in the use of the property.*** Yes, the layout of the buildings and drive represent a difficulty in moving the basic footprint of the existing building.
8. Petition: 24-V-015  
Address: 2334 N 600 W  
Location: Lafayette Township  
Petitioner: Rodney Kiphart  
Land Owners: Rodney Kiphart  
Zoning: AG  
Request: Front yard setback relief

Director Strange presented the staff report for 24-V-015 with a staff recommendation to approve this variance. The petitioner didn't have anything to add. Member Brown made a motion to approve 24-V-015 with the findings of fact, seconded by Member Stamm. Roll call 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.
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 petitioner would not be able to do the project.

### Miscellaneous

Director Strange shared a letter that went out to Kelly Drews. He will request an executive session. There was discussion with the board and Director Strange.

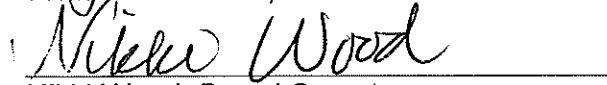
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Adjournment

Member Brown made a motion to adjourn, seconded by Member Stamm. Meeting adjourned at 10:17:01 a.m.



John Simmermon, Chairman



Nikki Wood, Board Secretary