

BZA - Minutes May 28, 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, Vice Chairman - Curt Stephenson, Jerry Stamm, Kelly Salyer and Lindsay Brown

Members Absent: none

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 – Lindsay Brown
4. Member Stamm made a motion to approve the April 23, 2024 Board Minutes, seconded by Member Salyer. Voice call was unanimous. **Motion approved**

New Business

1. Petition: 24-V-016
Address: 10660 N 600 W
Location: Pipe Creek Township
Petitioner: Sayed Kamel
Land Owners: Sayed Kamel
Zoning: AG
Request: Maximum lot coverage relief

Lindsay Brown arrived at 9:04

Director Strange gave an explanation on the maximum lot coverage requirement in the zoning ordinance and presented the staff report for petition 2024-V-016 with a staff recommendation to approve this variance. The petitioner was available for questions and Member Simmermon confirmed his proposed building is for personal use. No remonstrations. Member Stamm made a motion to approve 2024-V-016 along with staff recommendation and 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?*** There should be no negative impacts on property value as this variance is not creating/adding to a problem.

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3. ***Will the strict application of the terms of the zoning ordinance result in practical difficulty in the use of the property.*** Yes, the strict terms of the zoning ordinance would prevent the person from having a barn on a property that is a residentially-sized parcel.

2. Petition: 24-V-017
Address: 0 E State Road 38 (48-13-30-100-015.000-001)
Location: Adams Township
Petitioner: Shawn Tharp
Land Owners: Shawn Tharp
Zoning: AG
Request: Setback relief from State Road 38

Director Strange presented the staff report for petition 2024-V-017 with a staff recommendation to approve this variance. The petitioner was available and answered some questions from the board. No remonstrations. Member Brown made a motion to approve the 2024-V-017 as presented 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?*** 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 strict terms of the zoning ordinance would prevent the person from having a home on a property that is a residentially-sized parcel.

3. Petition: 24-V-018
Address: 0 W 1050 S (48-16-03-200-024.000-014)
Location: Green Township
Petitioner: Jim Stallsworth
Land Owners: Jim Stallsworth
Zoning: CR
Request: Reduce front yard setback to 60' from 140'

Director Strange presented the staff report for petition 2024-V-018 with a staff recommendation to approve this petition. No remonstrations. Jessica Bastin, County Engineer, added that it is not ideal to have that many driveways in that close of proximity but adding one more will not be problematic. She doesn't see a problem with what is being proposed today. Member Brown asked about the traffic in that area. Jessica doesn't have any numbers today but they are working with a consulting firm and the town of Ingalls to do a traffic study of that area. From their initial findings, there weren't any intersections in that vicinity that were classified lower than an A. The petitioner was available but didn't have anything to add. No remonstrations. There was discussion among the board members. Member Stamm made a motion to approve 2024-V-018 along with the staff recommendation and findings of fact, seconded by Member Stephenson. Roll call was unanimous. **Motion approved**

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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 strict terms of the zoning ordinance would prevent the person from having a barn on a property that is a residentially-sized parcel.
4. Petition: 24-V-019
Address: 8838 S 300 W
Location: Fall Creek Township
Petitioner: Sidney Rogers
Land Owners: Sidney Rogers
Zoning: AG
Request: Front yard setback relief

Director Strange presented the staff report for petition 2024-V-019 with a staff recommendation to approve this variance. The petitioner spoke of the history of the property and his porch plans. No remonstrations. There was discussion between the board and petitioner. Member Stephenson made a motion to approve 2024-V-019 along with staff findings of fact, 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?* 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 strict terms of the zoning ordinance would prevent the person from having improving an older home.
5. Petition: 24-V-020
Address: 3986 E 300 N
Location: Richland Township
Petitioner: Jeff & Jana Chambers
Land Owners: Jeff & Jana Chambers
Zoning: AG
Request: Maximum lot coverage relief

Director Strange presented the staff report for petition 2024-V-020 with a staff recommendation to approve this variance. The petitioner spoke and confirmed Members Simmermon's question that the structure is for personal use. No remonstrations. There was discussion between the board and Director Strange about his lot coverage. Member Brown made a motion to approve 2024-V-020

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along with staff 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?** 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 strict terms of the zoning ordinance would prevent the person from having a house on a property that is a residentially-sized parcel.

6. Petition: 24-SU-006
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: Add events to the BZA approved list of events

Director Strange presented the staff report for petition 2024-SU-006. The petitioners were approved for some agritourism activities in February and were asked to come back for approval of additional activities. Director Strange went on to explain the ticket structure and event hours. No remonstrations. There was discussion between the board and Director Strange about restrictions and problems that may arise in the future. Member Brown questioned approving the petition and then addressing problems after the fact becomes a problem for the board. Director Strange mentioned they could make a condition that if there is an issue they could be brought straight back to the BZA. There was discussion between Attorney Graham, Director Strange and the board about placing conditions. The petitioner, John, spoke. He described the ticket sales and control of traffic, the sales they've already had. Member Simmermon asked when the parking lot will be in and has concerns about enough parking for events. On their website and social media, they direct traffic from Rangeline to avoid the previous concerns of traffic around the double curve to the east. Member Stephenson questioned how the events happen with turn-over. John stated that they have people to help with parking and 30 minutes to usher cars out of the parking lot before the next event, if they had another event, would occur. Member Brown questioned the petting zoo. John said they'll have Old English sheep, dwarf goats, a micro pig, and possibly a miniature donkey in the next year or two. No remonstrations. Attorney Graham mentions the commitments placed by the petitioner are better than conditions. Member Brown made a motion to approve petition 2024-S-006 including the findings of fact as well as the commitments, seconded by Member Salyer. 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 operation 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

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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 project are consistent with the zoning code and comprehensive plan.

7. Petition 24-V-021 was **Withdrawn**

8. Petition: 24-V-022
Address: 4867 W. 8th St Rd.
Location: Jackson Township
Petitioner: Rudy Hollinger
Land Owners: Rudy Hollinger
Zoning: CR
Request: Accessory structure in front of primary structure

Director Strange presented the staff report for petition 2024-V-022 with a staff recommendation pending additional review. Neighbors circulated a petition with approximately 15 signatures with concerns that the barn would be inconsistent with the current character of surrounding properties, cause traffic concerns and negatively impact property values. Jessica Bastin, County Engineer, confirmed that 8th St. Road is an area of concern in the county but based on the information she has, she doesn't see concerns as long as there is sufficient parking and no parking along the street. Member Simmermon questioned the number of cars that would cause problems on the curve. Jessica stated she would need a traffic study to answer that, but in her opinion, it is more about the cars turning off the road. 20 cars at one time trying to turn onto the property would impede traffic. She reiterates that she has limited information but nothing she has seen raises additional concerns beyond the concerns that already exist in that area. Member Brown asked about blind spots. Jessica states no true blind spot but you have to pay attention in that area. There is discussion between the board and Director Strange about the appearance of the barn and concerns about use of the barn long term. The petitioner, Rudy, showed the board an image of what he thinks his barn will look like. Member Brown asked why he doesn't build behind the house. The petitioner states the 8 foot elevation change would create more work, the main powerline comes in low, and he wants a parking lot big enough to turn trailers around and back into the barn which he doesn't have enough room with all the trees behind the house. He also has range-free chickens behind the house. He further explained his reasons for having the barn in the open field in front. Member Simmermon asked how often he plans to have events in the barn. Rudy plans for no more than once per month. There is more discussion between the board and petitioner about the placement of the barn, use of the barn and parking. Several remonstrators spoke of their concerns and are not in favor of this petition. Jessica Bastin stated for the board she is not in favor of a second driveway or event center. Rudy states there will be no second driveway and no event center. He is sensitive to the traffic concerns and doesn't intend to increase the traffic. Attorney Graham asked if he could provide a rendering of the barn. There was further discussion between the board and petitioner. After all information given today, staff recommendation is unfavorable. He is able to build behind the house with building permit. Member Stephenson asked the petitioner where the septic is located to which the petitioner stated placing the barn behind the house would cause them to move their septic. Member Brown made a motion to deny petition 2024-V-022 based off the findings of facts 1. The proposed barn would impact the property value due to the aesthetics, 2. A change of open field by adding a barn with

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its orientation will impact the property values of the other properties, 3. Building a barn in the rear of the house could not be practical due to the location of the septic system and the tree removal, seconded by Member Simmermon. 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?*** Yes, the increased traffic flow will negatively impact the public
2. ***Will the use and value of the area adjacent to the property included in the variance be affected in a substantially adverse manner?*** The proposed barn compared to the current view would substantially change the property value due to the change in aesthetics. Adding a barn with the proposed orientation will substantially effect property values in an adverse manner.
3. ***Will the strict application of the terms of the zoning ordinance result in practical difficulty in the use of the property.*** Yes, the strict terms of the zoning ordinance would require the petitioner to fell multiple trees in his back yard making the project practically impossible.

9. Petition: 24-V-023
Address: 3191 S 500 W
Location: Stony Creek Township
Petitioner: Joel Thurman
Land Owners: Joel and Julie Thurman
Zoning: AG
Request: Relief of 10' building separation

Director Strange presented the staff report for petition 2024-V-023 with the staff recommendation to approve with the condition that the structure needs fire-rated walls installed in the roof and the adjacent walls to the primary structure. No remonstrations. The petitioner answered some questions from the board. Member Stamm made a motion to approve 2024-V-023 along with the findings of fact, seconded by Member Stephenson. 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 strict terms of the zoning ordinance would prevent the person from efficiently using the hardware on the patio to help with the proposed enclosure.

10. Petition: 24-V-024
Address: 4343 E 575 S
Location: Adams Township
Petitioner: Joseph Binder
Land Owners: Joseph Binder
Zoning: AG
Request: Accessory structure in front of primary structure

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Director Strange presented the staff report for petition 2024-V-024 with the staff recommendation to approve this petition. No remonstrations. The petitioner was available but didn't have anything to add. Member Stamm made a motion to approve 2024-V-024 along with the findings of fact, 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?* 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 strict terms of the zoning ordinance would prevent the person from building the barn.

Miscellaneous

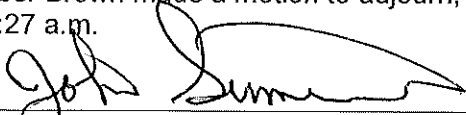
Director Strange would like to cap the petitions to 10 petitions per meeting. Per Attorney Graham, the board can verbally today vote to amend its rules to cap it at 10 petitions and subsequent petitions move back a month. Member Brown made a motion to cap petitions to 10 per month, seconded by Member Salyer. Voice call was unanimous. **Motion approved**

Director Strange read a draft memorandum in regards to Drew's Parts, subject to Attorney Graham's review. Drew's Parts was given 90 days to remove all operations from the property. On March 26, 2024, the BZA affirms Lauren Whites appeal of Director Strange's determination that Drew's Parts was in compliance effectively immediately placing Drew's Parts in noncompliance with Madison County code. On March 26, 2024, prior to the meeting Director Strange announced that because of ongoing noncompliance they would be fined \$50.00 per day until the Drew's Parts operation was removed from site with the stipulation that the fine could be reduced by the director if good progress was shown. On April 24, 2024, Drew's Parts by council Ralph Sipes filed a petition for judicial review of the case. Per Attorney Graham, they can request a pause but as of today they have not done that so the decision of the fine is still in effect. As of May 21, 2024, two inspections have been done and no real progress towards removing the violation has been noticed. A fine for the first 60 days will go out today for \$3000.00. On June 24, 2024, if Drew's Parts operations have not been removed from the property, a fine of \$2000.00 per day will be instituted and a judicial remedy will be sought. Member Simmermon confirms there is no stay. Attorney Graham said there is no stay until the court says there is. If there is a stay in place, it will stop the fines. There was discussion between Member Brown and Jessica Bastin about cleaning out the trenches in that area.


Adjournment

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Member Brown made a motion to adjourn, seconded by Member Stephenson. Meeting adjourned at 11:27 a.m.



John Simmermon, Chairman



Nikki Wood, Board Secretary