

BZA - Minutes September 24, 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 – 1 absent – Lindsay Brown
4. Member Stamm made a motion to approve the August 27, 2024 Board Minutes, seconded by Member Salyer. Voice call was unanimous. **Motion approved**

Old Business

None

New Business

1. Petition: 24-SU-016
Address: 464 E 1650 N
Location: Van Buren Township
Petitioner: Thomas & Haley Hart
Land Owners: Thomas & Haley Hart
Zoning: AG
Request: Request to build second home on parcel

Director Strange presented the staff report for 2024-SU-016. Staff recommendation is to approve this petition. There was discussion about adding a commitment to tear down the primary structure after the petitioners' grandmother no longer needs the residence. The petitioner spoke and answered questions from the board. He confirmed the residence will not be used as a rental.

Lindsay Brown arrived at 9:07.

No remonstrators. Member Stephenson made a motion to approve 2024-SU-016 along with the petitioner's commitment that only Ms. Lois Kilgore can reside there and upon her no longer residing in the residence for any reason the petitioner commits to removing the residence from the property within 6 months, seconded by Member Stamm. Roll call 4 yes, 1 abstain – Lindsay Brown. **Motion approved**

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FINDINGS of FACT for SPECIAL USE

1. **Will the approval be injurious to the public health, safety, morals, and general welfare of the community?** No. This new development 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 if 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.

2. Petition: 24-V-038
Address: 7560 W 400 N
Location: Jackson Township
Petitioner: Paul & Donna Parton
Land Owners: Paul & Donna Parton
Zoning: AG
Request: Accessory Structure in front of a Primary Structure

Director Strange presented the staff report for 2024-V-038. Staff recommendation is to approve this petition. The petitioners were present but had nothing to add. No remonstrators. Member Salyer made a motion to approve 2024-V-038, 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, placing the structure north of the house is problematic because of the terrain.

3. Petition: 24-V-039
Address: 8302 W 150 N
Location: Jackson Township
Petitioner: Scott Mills
Land Owners: Scott Mills
Zoning: AG
Request: Build new structure taller than the 25 foot maximum

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Director Strange presented the staff report for 2024-V-039. Staff recommendation is to approve this petition. The petitioner was present but had nothing to add. No remonstrators. Member Brown made a motion to approve 2024-V-039 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, as the petitioner's equipment requires a higher building height.
4. Petition: 24-SU-017
Address: 701 Layton Road
Location: Stony Creek Township
Petitioner: Therese Brown
Land Owners: Philip & Therese Brown
Zoning: LC
Request: Run an event center

Director Strange presented the staff report for 2024-SU-017. The petitioners were approved by the Planning Commission to rezone to Local Commercial for the event center in August 2024. Staff recommends approval with the following conditions: 1) Before a building permit is issued, appropriate approvals from the Indiana Department of Homeland Security, the State Board of Health, and the County drainage board must be obtained. 2) Detailed site plans are provided for review by the appropriate county departments prior to a building permit being issued. Attorney Adler spoke on behalf of the petitioners and understands the conditions placed. He confirms the petitioner will live on the property. Petitioner Teri Brown spoke to explain the types of events planned at this site. There was discussion between the board and petitioner about the type of events they have planned and noise ordinance. The petitioners do have plans of adding buffers for sound. There was discussion between the board and Attorney Graham about conditions and commitments. One remonstrator spoke of concerns about traffic and safety with lack of lighting and speeding. Member Brown made a motion to approve 2024-SU-017 with the findings of fact including a tree barrier to be place and owners reside on the property by September 24, 2025 with a caveat that they can file an extension if the petitioners cannot make that date, 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 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

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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 if 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.

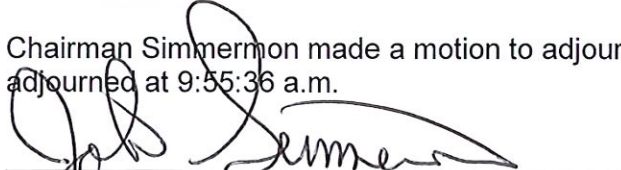
Miscellaneous

Director Strange said that after the August BZA meets he asked Attorney Graham to put to judgment the \$26,000 fine and to file an injunction to authorize us to close 705 E. School Street on the 90th day following the August BZA meeting. Attorney Graham informed the board that after the injunction is filed there will be three outstanding cases against Drew's Parts. 1) There is a nuisance action filed by Mr. Sean Smith, 2) the judicial review that was filed by Drew's Parts against the Board of Zoning Appeals, and 3) an enforcement action by this board to request an injunction on that property. Judge Hopper recused jurisdiction and the case has been transferred to Judge Koester's court. Judge Koester hasn't accepted jurisdiction. The reason it was transferred was because Mr. Smith's litigation is filed in that court and it makes sense to have all cases in one spot. As of right now, Mr. Smith is in front of Judge Koester on his case. All cases will be consolidated into one court. Just yesterday, Mr. Smith filed to consolidate the judicial review into his nuisance action against Drew's Parts. Ultimately this will all go in front of Judge Koester assuming he takes jurisdiction. An update on the judicial review: Trial rules indicate that as the petitioner of the judicial review, Ms. Laureen White is a necessary party to that litigation. As she was not named, the effect of that is uncertain, but that could possibly a motion to dismiss. There is also a matter of whether the record was timely filed by the petitioner. The transcript was but not all the exhibits were and the deadline is long since past. Attorney Graham said that on the merits of the case even if Drew's Parts can survive the procedural hurdles, which are substantial, that the county and Ms. White will prevail on the merits. Attorney Graham will start filing now even though there isn't a court that can rule on them. Member Brown would like to see if the county can recoup some funds on legal costs. Drew's Parts is currently being fined \$500 per month on top of the \$26,000 fine. Sean Smith spoke and received an update from IDEM that A& E Tire Recycling is a registered waste tire storage and listed Drew's Parts as a vendor on September 17, 2024. Mr. Smith presented the IDEM report to the board

Salty Dog submitted an Administrative Appeal which will be heard next month.

Adjournment

Chairman Simmermon made a motion to adjourn, seconded by Member Brown. Meeting adjourned at 9:55:36 a.m.



John Simmermon, Chairman



Nikki Wood, Board Secretary