

BZA - Minutes October 22, 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, and Lindsay Brown

Members Absent: Kelly Salyer

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 – 3 present, 2 absent – Kelly Salyer and Lindsay Brown
4. Member Stamm made a motion to approve the September 24, 2024 Board Minutes, seconded by Member Stephenson. Voice call was unanimous. **Motion approved**

Old Business

None

New Business

Lindsay Brown arrived at 9:03 am.

1. Petition: 24-V-041
Address: 8298 W Fall Creek Dr
Location: Green Township
Petitioner: Jeremy Friedman
Land Owners: Jeremy Friedman
Zoning: AG
Request: Accessory Structure in front of a Primary Structure

Director Strange presented the staff report for 2024-V-041. Staff recommendation is to approve this petition. The petitioner was present via Microsoft Teams and just reiterated that his intent is storage. There were no remonstrators. Member Stamm made a motion to approve 2024-V-041 along with 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.

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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, existing tree coverage, and the residents' geothermal field.

2. Petition: 24-V-042
Address: 7143 W Fall Creek Dr.
Location: Green Township
Petitioner: Kursten & Daniel Smith
Land Owners: Kursten Smith
Zoning: AG
Request: 2nd driveway

Director Strange presented the staff report for 2024-V-042 and 2024-V-043. The petitioner already placed a second driveway and is in violation so he is now applying for the variance. This was reviewed with the engineer; their concern is that all requirements are met which will be placed as conditions. Staff recommendation is to approve this petition with the following conditions: 1) The homeowner shall re-establish any ditch or drainage swale that existed prior to starting their work. 2) A driveway permit subject to all highway department requirements is obtained by the petitioner. The petitioners were present and answered a couple questions from the board. No remonstrators. Member Brown made a motion to approve petition 2024-V-042 with the findings of fact and conditions, 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 configuration of the existing driveway and gates prevent the petitioner from maintaining their motor home and travel trailer.

3. Petition: 24-V-043
Address: 7143 W Fall Creek Dr.
Location: Green Township
Petitioner: Kursten & Daniel Smith
Land Owners: Kursten Smith
Zoning: AG
Request: Driveway separation less than minimum requirement of 200 feet

This petition 2024-V-043 was presented with petition 2024-V-042. Member Brown made a motion to approve petition 2024-V-043 with the findings of fact and conditions, seconded by Member Stamm. 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?*** 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 configuration of the existing driveway and gates prevent the petitioner from maintaining their motor home and travel trailer.
4. Petition: 24-AA-002
Address: 5473 N State Road 9
Location: Richland Township
Petitioner: Salty Dog Trash Trailers, LLC
Land Owners: Salty Dog Trash Trailers, LLC
Zoning: AG
Request: Appeal violation determination

Director Strange presented his staff report for petition 2024-AA-002, which is an appeal to the decision of the Planning Director that Salty Dog is in violation of the zoning ordinance for operating without a valid special use. Member Simmermon served on the BZA Board during Salty Dog's original petition and recalls granting the petition based on Salty Dog picking up waste materials from construction sites only.

Jim Williams states what was heard from Director Strange was inaccurate and the process of sorting that Member Simmermon remembers is precise and states that is what has occurred, but they don't have a MRF building. They are bringing in construction and demolition waste and sending back out to be recycled. Mr. Williams states that Salty Dog did not get the final letter from BZA until June 2023. Mr. Williams explained that Solid Waste is the broadest term in the IDEM regulatory code. Everything goes under Solid Waste Processing, Salty Dog is placed under Solid Waste as part B: a Material Recovery Facility, which is a recycling, sorting operation. He goes on to explain email correspondence between Ms. Hoff, Brad Newman (Planning director at that time) and Jeff Graham. Mr. Williams passed out a building permit issued September 1, 2023 for the first building permit for the office / storage building. The second building permit is being held, not issued, due to Salty Dog being in violation. Salty Dog is requesting the BZA to vacate the findings, order that a building permit be issued in accordance with its regular processes and allow Salty Dog to continue with the project based on its full commitment to abide by the special use conditions as set forth in the BZA's grant of the existing special use.

Member Brown questions the building permits, changes in number of buildings and the timeline. Mr. Williams states the valid BZA letter without the draft watermark wasn't received until June 22, 2023 to allow for building and complete the IDEM permit.

Petitioner Brandon Small spoke about the sorting process. He explained that they get paid to take and haul recyclables, if they brought trash to the facility they would have to pay and wouldn't make

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it on a fiscal level. Director Strange spoke with IDEM and confirmed that Material Recovery is a subset of Solid Waste.

Doug Louks, former IDEM legal counsel states that solid waste is intentionally broad and pretty much anything falls under solid waste. A subset of that is construction and demolition waste. Most people think of solid waste as trash but that would fall under municipal solid waste. Salty Dog has up to 10% municipal solid waste in their IDEM permit. Member Brown wants to see documentation from IDEM. Member Stephenson asked how to measure the solid waste.

Laureen white spoke in opposition of Salty Dog on behalf of several neighbors. She provided a binder with her presentation for today with exhibits. Ms. White states the special use was granted to Salty Dog the day the BZA voted on it (March 26, 2021) with the conditions laid out and that Salty Dog has disregarded all conditions. She stated the delay in getting the letter was due to Salty Dog asking for a change in the letter to state Solid Waste Processing Facility instead of Material Recovery Facility which was voted on and granted. The BZA's 2021 Special Use was issued with a condition that any expansion or changes would require Salty Dog to come back to the BZA for modifications to the Special Use. No extension or modification was requested. Ms. White states Salty Dog poses a threat to the drinking water. She further explains and shows exhibits of violations.

Remonstrator Samuel Taylor urges the BZA to deny the appeal. He states 100+ tons of material onsite makes it a problem for him and the other neighbors. He speaks about the concerns of the water supply and contamination from the Salty Dog operations. Mr. Taylor states they operate outside of business hours.

Mike Pelsor, Lafayette Township Fire Chief, encourages anyone to check out this facility. Mr. Pelsor feels Salty Dog has gone above and beyond and finds no problems with the operation.

Rick Robinson spoke in opposition of Salty Dog with complaints of no buffer zones. Rhonda Utter also spoke of frustrations that promises were made and not kept. States she just wants rules followed.

Mr. Williams spoke again. He states it was the clients misunderstanding, they assumed barriers would be placed after the construction as a matter of sequencing the process. After seeing the complaint, they started placing barriers. If there is a violation, shut them down, but right now this is a perspective fear about what might happen, no evidence other than the barrier issue which is in the process of being addressed and the truck traffic which has been dealt with. Member Stephenson said if the second building is permitted, it is his understanding that the entire operation will be inside, to which Mr. Williams said yes. Member Stephenson asked if they will crush concrete indoors. Mr. Small said the concrete was crushed for a base for the buildings and roads. There will not be a concrete crushing operation in the future. Member Brown asks how everything will be inside after changing plans from six or seven building to two buildings. He confirmed with Mr. Williams that everything will be inside. Member Brown asked for a site plan and a proposal showing plans with the operations with two buildings. There was more discussion between the board and Mr. Williams. Member Stamm asked about the wells with the new building. They would like a site plan showing the new building and wells. Mr. Williams states Director Strange has that information.

Director Strange wants to touch on three things. His determination that Salty Dog was in violation was based on reviewing the complaint and 1) determining that classifying this operation as a solid waste processing facility was not what was heard in the special use meeting in 2021. Our code "11.8 F. A use authorized as a special use may not be expanded, extended, or enlarged unless reauthorized by the Board under the procedures set forth in this section for granting a special use." They have expanded and need to come back for a special use. 2) Buffers were the first two

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conditions of the special use. They started doing the buffers in 2024. 3) Laureen noted there were no advertisements stating a special use, Director Strange played a clip from the 2021 meeting stating "...operate a special use for a materials recovery facility."

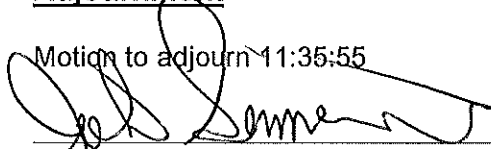
Attorney Graham had a couple suggestions, there have been multiple requests for additional information, the board can continue to the November meeting. There was discussion between the board, Director Strange and Attorney Graham about permits and ceasing operations if the BZA determines they are in violation. Member Brown made a motion to continue this petition to the November 26th BZA meeting, seconded by Member Stamm. The board set a 10 day limit on requested materials. Roll call was unanimous. **Motion approved.** Petition is continued to November 26th

Miscellaneous

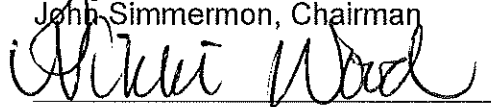
Attorney Graham stated a complaint was filed last week on the Drews Parts matter requesting an injunction and for the fines to be reduced to a judgement. Probably this week we will file for an expedited hearing on the injunction matter to get in front of the court prior to the extensions. There will be a hearing to give Drews Parts time to comply and any interested parties will be invited to that hearing. Second thing to bring up is that when continuing a BZA petition, you are limited to the evidence on the record, you should politely decline conversation about the petition. Should not do any site inspections. It is not improper to communicate with Director Strange or Jeff Graham.

Adjournment

Motion to adjourn 11:35:55



John Simmermon, Chairman



Nikki Wood, Board Secretary