

BZA - Minutes November 26, 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

Members Absent: Lindsay Brown

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 October 22, 2024 Board Minutes, seconded by Member Stephenson. Voice call was unanimous. **Motion approved**
5. Member Stamm made a motion to approve the 2025 BZA calendar, seconded by Member Salyer. Voice call was unanimous. **Motion approved**

Old Business

1. Petition: 24-AA-002 *continued from October meeting*
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 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 stated we had extensive public comment in the last meeting and now we need to ask for a rebuttal.

Maura Hoff with DeFur Voran presented the side of Salty Dog. Ms. Hoff handled the BZA hearing in 2021 and stated at that time they would need to obtain a solid waste transfer permit as no other category encompasses what Salty Dog would do. From the beginning there has been a language barrier between what the IDEM permit would be vs what the local permit would be. They have remained committed to only operating a material recovery facility. Ms. Hoff provided the board with a binder of information and presented some of the information in the binder. Ms. Hoff reiterated IDEM mentions on their website that local laws can trump IDEM and be more restrictive.

BZA - Minutes November 26, 2024 Board Meeting

Salty Dog will bring clean materials consisting of general recyclables and construction and demolition waste to their facility, sort the items, and distribute them to the facilities that do the recycling.

Ms. Hoff stated the title of having a solid waste processing permit from IDEM is not an expansion of the Special Use. It was recommended that they would have to come back for a new Special Use to expand their production. They don't want to expand. They want to be limited by the terms of the Material Recovery Facility and the commitments made three years ago.

Member Simmerman mentions the extra waste onsite and the concern with how quickly that is being hauled off. Brandon Small, owner of Salty Dog, stated the landfill where they take waste to closes earlier than transfer stations so if his drivers hit traffic, they will bring the dumpsters to the Salty Dog property until the landfill is open.

Ms. Hoff asks the board to reverse Director Strange's findings and issue their building permit. They welcome all inspections to ensure they follow all terms of the Special Use.

Member Simmermon makes a motion to close public hearing, seconded by Member Stephenson. Roll call was unanimous. **Motion approved**

Member Stephenson says the board is in a gray area in regards to the Special Use for recovery of building materials and the IDEM permit being more expansive than the Special Use. He is supportive of the Special Use for the building materials. How does the board control that it doesn't open up to being a junk yard. Attorney Graham states local law can be more restrictive than the state law. There was more discussion between the board and Attorney Graham.

Member Stamm questioned if the Drainage Board approved the plans after the changes in number of buildings. Ms. Hoff explained that the changes from 5 buildings to 2 buildings was changed back in 2021 before the Drainage Board reviewed it. Brandon took the change to Brad Newman and Brad stated that if the changes made don't aggressively exceed the current square footage of the total building space, he doesn't see a problem.

Member Stephenson asked who measures the 10% solid waste. Attorney Graham states we can hire outside consultants if there are any complaints.

Member Salyer made a motion to uphold the administrative appeal and overturn the planning directors decision to deny and remove the special use, seconded by Member Stamm. Roll call was unanimous. **Motion approved**

The board and Attorney Graham discussed the Findings of Fact provided by Ms. Hoff; made changes and added and removed findings. Attorney Graham read the Findings of Fact:

FINDINGS OF FACT FOR APPEAL

BACKGROUND FACTS

1. Salty Dog came before the BZA to request Special Use approval for the operation of a Material Recovery Facility on March 23, 2021. The public hearing was held and a verbal vote was taken in favor of the approval with a number of commitments required.
2. Salty Dog spoke with Director Newman in July 2021 regarding IDEM's requirement to shift all operations under one roof; Newman analyzed the new sketched site plan and agreed that it did not grossly exceed the previously approved total square footage and he would sign off on this change administratively.

BZA - Minutes November 26, 2024 Board Meeting

3. The written approval of this Special Use and Findings were provided to Salty Dog on June 22, 2023.
4. Salty Dog obtained a permit for stormwater and pond from the Madison County Drainage Board on June 6, 2023.
5. Salty Dog obtained a Building Permit for its first structure on September 1, 2023. That building is operational and passed fire department inspections.
6. Salty Dog applied for (on August 2, 2023), and obtained, a solid waste processing permit from IDEM on April 4, 2024.
7. Salty Dog applied for a second building permit in summer 2024, which was denied by Director Strange of the planning department.

PROCEDURAL FACTS RELATED TO APPEAL

8. In the spring of 2024, some citizens filed a complaint regarding Salty Dog's operations. Correspondence was sent back and forth between the county and Salty Dog. Of the approximate thirteen allegations, Director Strange found the majority of them without merit and dismissed them.
 9. The August 6, 2024 letter from Director Strange is the subject of this appeal. In that letter, he determined that:
 - a. Hours of operation were advised to be in compliance with the Special Use conditions.
 - b. An updated buffer yard plan and schedule for landscaping completion were required (and have now been provided).
 - c. The IDEM permit letter showed an expansion of use (for "solid waste") which was not included in the original Special Use approval and a new special use would be required.
- Due to determination (c) above, Director Strange determined that Salty Dog was operating a Solid Waste Processing Facility in violation of its Special Use.
10. Salty Dog appealed Director Strange's determination that Salty Dog is in violation of its Special Use permit. A hearing was held before the BZA on October 22, 2024 and continued to November 26, 2024.
 11. Director Strange issued a Staff Report prior to the October hearing regarding the appeal in which he expanded the allegation of issues to be addressed by including a statement that the Special Use for Salty Dog had expired.
 12. Salty Dog commenced activities within the one (1) year period outlined in ordinance.
 13. Salty Dog did not receive a final written approval letter from the county until June 22, 2023. This final letter was required to be submitted with the IDEM permit application.
 14. Any delay in completing all development on the site was the result of inherent delays due to State permitting, COVID-related issues, and other factors out of Salty Dog's hands.
 15. Until the days immediately preceding the hearing on this appeal, Salty Dog had not been notified by the county of any issue regarding expiration of its Special Use.

SUBSTANTIVE FINDINGS OF FACT REGARDING APPEAL

16. Salty Dog's Special Use has not expired, as activities "commenced" immediately after the verbal approval, additional permits were sought and approved, and the first building is on site and operational.

BZA - Minutes November 26, 2024 Board Meeting

17. There is no expansion of the Special Use so great as to render the necessity of an additional hearing for a modification of the Special Use. However the county reserves the right to require a modification of the Special Use if activities on the site so warrant.
18. No solid waste, other than material recovery for the purposes of sorting and recycling, has been processed on site. Therefore, no current violation of the MRF approval has taken place.
19. The use of "solid waste" in the title of the IDEM permit is a catch-all phrase which does not expand the permitted use of the Salty Dog site; Salty Dog remains obligated to adhere to the more stringent requirements of the commitments in its Special Use permit. Therefore, this additional permit from the State does not demonstrate a violation of the Special Use permit.
20. The BZA hereby voids Director Strange's determination that Salty Dog was in violation of its Special Use permit.
21. The building permit application filed by Salty Dog shall be approved.
22. The Planning Director is directed to notice a status hearing for our November 2025 BZA meeting.
23. Once aforementioned building is complete, no outdoor storage is permitted, all construction and waste material shall be kept in the building.

Member Stamm made a motion to approve the findings of fact as read, seconded by Member Stephenson. Roll call was unanimous. **Motion approved**

NEW BUSINESS

1. Petition: 24-SU-018
Address: 7857 S 750 W
Location: Green Township
Petitioner: Sandra Lemons
Land Owners: David Lemons
Zoning: AG
Request: Home Occupation 2 – Knitting workshops

Director Strange presented the staff report for petition 24-SU-018. Staff recommends approval with the condition that: Before the special use commences, the petitioner should secure clearance from the Indiana Department of Homeland Security, Building Plan Review, either through a Commercial Design Release or through a letter/email stating that a CDR is not required. The petitioners spoke to Indiana Department of Homeland Security and stated nothing is needed. They provided a document supporting their statement. Member Stephenson made a motion to approve petition 24-SU-018 along with the findings of fact, 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 the standards of the Madison County Land Use Development Code. All future improvements will be subject to the applicable development standards.

BZA - Minutes November 26, 2024 Board Meeting

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-044
Address: 7857 S 750 W
Location: Green Township
Petitioner: David Lemons
Land Owners: David Lemons
Zoning: AG
Request: farm animals on less than 4 acres

Director Strange presented the staff report for petition 24-V-044. The request is for up to 4 alpacas and 10 chickens which is the max allowed for the 3.1 acre property. Staff recommends approval. Additional animal units to the existing would put the property in violation so that is the max number they can have. Member Stephenson made a motion to approve petition 24-V-044 along 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?* There should be no negative impacts on property value as the surrounding property is farmland or interstate.
3. *Will the strict application of the terms of the zoning ordinance result in practical difficulty in the use of the property.* Yes, they would not be able to have their animals.

3. Petition: 24-V-045
Address: 9385 W SR 128
Location: Pipe Creek Township
Petitioner: Mark & Sharon Rogers
Land Owners: Mark & Sharon Rogers
Zoning: AG
Request: Accessory structure in front of the primary structure

Director Strange presented the staff report for petition 24-V-045 to build a barn in front of the primary structure. Staff recommends approval. Member Stephenson made a motion to approve 24-V-045 along with the findings of fact, seconded by Member Stamm. 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?* There should be no negative impacts on property value .

BZA - Minutes November 26, 2024 Board Meeting

3. *Will the strict application of the terms of the zoning ordinance result in practical difficulty in the use of the property. Yes, there is no other feasible location for the barn*

4. Petition: 24-SU-019
Address: 0 N 300 W (48-05-28-100-002.000-025)
Location: Pipe Creek Township
Petitioner: Lowell "Trent" Fern
Land Owners: Lowell "Trent" Fern
Zoning: AG
Request: Build an accessory structure prior to a primary structure

Director Strange presented the staff report for petition 24-SU-019 to build a pole barn prior to building the primary structure. The petitioner has agreed to conditions to place the house in front of the barn and comply with the code requirements that the house be started in two years and there be no business activity. Staff recommends approval with the following conditions: 1) The house is built in front of the accessory structure, and 2) Comply with the covenant requirements cited above. Member Stephenson made a motion to approve 24-SU-019 along with the findings of fact, 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. 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.

5. Petition: 24-V-048
Address: 4570 W St Rd 32
Location: Stony Creek Township
Petitioner: MarMi LLC
Land Owners: Mitch Smith
Zoning: GC
Request: Side yard setback relief

Director Strange presented the staff report for petition 24-V-048. Staff recommends approval for the side yard set back relief from 25' to 19'. He will need to come back to address another setback issue. Member Salyer made a motion to approve petition 24-V-048 with the staff findings of fact, seconded by Member Stamm.

FINDINGS of FACT for VARIANCE

BZA - Minutes November 26, 2024 Board Meeting

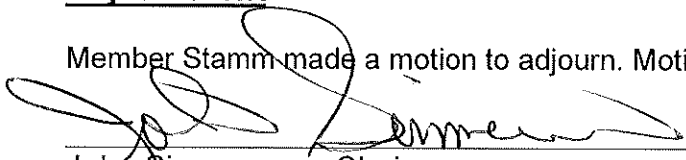
1. *Will the approval be injurious to the public health, safety, morals, and general welfare of the community?* No. The proposed use as presented should not negatively impact the public health, safety, morals, and general welfare of the community.
2. *Will the use and value of the area adjacent to the property included in the variance be affected in a substantially adverse manner?* There should be no negative impacts on property value as there will be no change in use.
3. *Will the strict application of the terms of the zoning ordinance result in practical difficulty in the use of the property.* The property would not be useable.

Miscellaneous

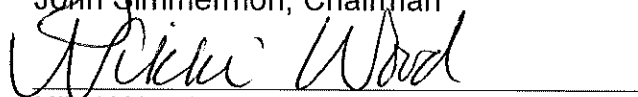
Director Strange asked the board if he should still fine (Drew's Parts) the \$500 per month fine to which the board answered yes. He will continue the \$500 per month fine while Drew's Parts still has stuff in the buildings and pursue payment.

Adjournment

Member Stamm made a motion to adjourn. Motion to adjourn 10:35:12



John Simmermon, Chairman



Nikki Wood, Board Secretary