

## **Floyd County Board of Zoning Appeals**

### **Minutes**

The regular meeting of the Floyd County Board of Zoning Appeals was held on **December 9, 2024 at 5pm** at the following address:

**Pineview Government Center Assembly Room 104  
2524 Corydon Pike  
New Albany, IN 47150**

#### **ROLL CALL**

**Present:** Larry Bibelhauser, Victor Unruh, Guy Heitkemper, Scott Whalen

**Absent:** Bill White

**Other:** Kristi Fox, Don Lopp, Gabrielle Adams

#### **MINUTES**

Minutes from November, 2024 regular BZA meeting

**Mr. Heitkemper-** correction on page two. The fourth line down says “Mr. Bibelhauser recused himself from the Ehringer property” and that was him, not Mr. Bibelhauser. Should read Mr. Heitkemper recused himself.

**Motion:** Approve with correction

**Moved by:** Guy Heitkemper

**Seconded by:** Scott Whalen

**Motion passed.**

Mr. Unruh abstained from voting since he was absent at the November meeting.

#### **OLD BUSINESS**

**Agenda Item 1 – FC-10-24-44: Administrative Appeal** – Applicant is appealing the September 9, 2024 Notice of Violation for infringing upon the shooting boundary for archery. The Sporting Club at the Farm. 4939 Highway 111 South, New Albany, IN 47150 (22-01-02-900-001.000-001). Section 29, Township 3 South, Range 6 East.

**Don Lopp-** Director of Operations and County Planning. Notice was not provided the surrounding property owners. Since that was part of the requirement, the Board has the ability to table the matter until they provide notice or can speak to Ms. Fox for an alternative method. As of right now, we do not have notice.

**Ms. Fox-** Board Legal Counsel. The Board can choose to table without sufficient notice

**Mr. Bibelhauser-** let me ask this, this is two months in a row now. Can we just deny it or move on or table it?

**Mr. Unruh-** someone from the Farm is here, come forward, state your name and address.

**Joe Crea-** Sporting Club at the Farm, 7209 Leafland Place, Prospect, KY. We reached out to the office twice, two weeks ago, we had not received an updated letter to send out. They only one we had was dated for the November meeting. So we did not receive a new one. Then we got noticed last week from Nick's office saying they had not got notice from us and that we had not sent letters out in time but we were never provided with a letter to send out.

[First contact made from The Farm to the Building & Development office was by Lori Brooks, by phone, on Friday, November 29, 2024 at 10:20am and 1:13pm. This was the Friday after Thanksgiving and our office was closed for the holiday.]

**Mr. Bibelhauser-** okay. Makes motion to table until next month.

**Motion:** Table until January meeting

**Moved by:** Larry Bibelhauser

**Seconded by:** Scott Whalen

**Motion passed.**

### **NEW BUSINESS**

**Agenda Item 2 – FC-11-24-46: Special Exception** – Applicant is requesting a special exception to expand a legal non-conforming use by building a small office at the wastewater treatment plant. Aqua Indiana, Inc. Tanglewood Drive, Floyds Knobs, IN 47119 (22-04-00-700-034.000-006). Section 7, Township 2 South, Range 6 East.

**Mr. Lopp-** read Staff Report: The applicant is requesting to expand an existing legal non-conforming use. Applicant is requesting to build a small office to assist in the operation of the existing wastewater treatment plant built prior to the implementation of the 2006 Floyd County Zoning Ordinance. The office will be a conversion of a manufactured home with a floor area of 713 square feet. Adjacent Property: the property is located to the north of the Wymberly Woods subdivision zoned RS, to the Northeast is the Charlet Ridge subdivision across Buck Creek Road, to the north and east are RR zoned single family lots, and to the west is a RR zoned undeveloped lot. Staff Findings: 1. The special exception WILL NOT be injurious to the public health, safety, morals, and general welfare of the community. The project will facilitate the operation of the utility. The structure will be built to applicable building code and not create any physical hazards to nearby properties. 2. The use and value of the area adjacent to the property subject to the special exception WILL NOT be affected in a substantially adverse manner. Site is the location of wastewater plant with utility structures. Addition of small office building will not significantly alter the use of the property. 3. The need for the special exception DOES arise from some condition peculiar to the property involved. The use is a legal non-conforming use since it was constructed before current zoning restrictions applied. 4. The strict application of the terms of the Floyd County Zoning Ordinance WILL result in an unnecessary hardship in the use of the property. Expansion of legal non-conforming uses require a special exception approval. 5. The approval of the special exception WILL NOT contradict the goals and objectives of the Floyd County Comprehensive Plan. The approval will support the operation of a utility providing adequate infrastructure to the community. Staff Recommendations: Maintain wooded screening of structures from neighboring properties and provide additional vegetative screening of proposed structure to include evergreen trees a minimum of 6 foot in height between the structure and any roadway.

**Ms. Fox-** announced that every applicant has the right to be heard before a full board and they have the option to table their item until the next month.

**Scott Siple-** Mid Western Engineers, representing Aqua Indiana/Wymberly Sanitary Works, 6809 Corp. Drive, Indianapolis, IN 46278. Nothing else to add other than specific questions from the Board. As long as there is a quorum present and the Board can act on this Special Exception, he has no issue going forward. As long as that's not an issue, he won't request to go before a full board.

**Mr. Unruh-** everybody can vote on this issue, correct?

**Ms. Fox-** no one has recused themselves at this point on this agenda item. You do have a quorum, which is four, it does require three of them to vote in favor.

**Mr. Siple-** okay. Submitted the green cards for the record and there were six letters that they did not receive green cards back. One was returned undeliverable and the others just weren't returned.

**Gabrielle Adams-** Planning Technician I. Applicants are only required to show proof of attempting to notify. All certified receipts were received and postmarked on time.

**Mr. Heitkemper-** asked if the building is a mobile home

**Mr. Siple-** more like a modular home, its pre-manufactured unit. They are working on the foundation plans now for IDHS foundation release. It will be anchored to a slab foundation. Not fully through the design yet but thinks it will be a slab and the building anchored to the slab, instead of being built-up on block. Unless there is a requirement to raise the finished floor to a certain elevation. They will take a look at that but their first step was to get through this process.

**Mr. Unruh-** the actual elevation next to the plant is about 5 foot difference in elevation and its right next to a creek, possible floodway. Concerned about the look next to the entrance by the road. Consider putting the building inside the fence.

Mr. Siple approached the Board and Mr. Unruh pointed out where he was referring to on the aerial map.

**Mr. Unruh-** asked what has changed in the use and why this is needed now. Asked about part time versus full time employees. How many employees.

**Mr. Siple-** can't speak on that exactly but suspects 1-2 people, full time.

**Mr. Unruh-** has a hard time voting either way on this without having these answers and in good spirit for the County, we really have to know what's going on with the building and if there is anyway it can be moved inside.

**Mr. Whalen-** asked if this is a new building and if this is the smallest size available.

**Mr. Unruh-** asked if anyone else has questions. No one did. Asked if anyone would like to speak in favor. No one came forward. Asked if anyone would like to speak in opposition.

**Clyde Harrelson-** 4059 Tanglewood Drive, Floyds Knobs. 20 years ago this company came before us about increasing rates from \$35-\$80 a month over a two year period. The prices have never dropped even though they have added on customer after customer. They still are not being charged by water consumption. The phone numbers they have listed on the fence were not working numbers then they took the sign down. Can't find them on google. Indianapolis is the closest place that Aqua is listed at. They don't keep up with mowing, keep trash cans out instead of putting them up. Employees were using the cans for their personal trash, not fair for customers to pay for employee's personal trash. No mention of parking on the plan. Currently the trucks park inside the fenced area. How many people can work there? The structure is a shed, a pre-fab home but when dropped on a slab it's basically a shed. Asked why the septic/sewer was not checked off on their application. The creek does flood. We know we're in a floodplain. Would look a lot nicer behind the fence. We don't need trees, we need it secure. Hopes it's voted on today so they don't get answers to these questions. This is basically a shed in front of our subdivision. The plant is a need, not the office, they can rent office space anywhere.

**Mr. Unruh-** asked about the flooding and if it has ever went over the entrance where the box culvert is.

**Mr. Harrelson-** no.

**Terri Butler-** 4059 Tanglewood Drive, his wife. Having a sewer plant in your backyard is not a good selling point for your home and does not want to draw more attention to the plant with this building out front.

**Mr. Unruh-** asked about the letter

**Ms. Fox-** not sure why the health department letter is not in the file, maybe Gabrielle can answer.

**Ms. Adams-** septic is not on the property so Health Department approval is not needed. The new building will be connected to their sewers and they will need to provide that documentation at the time of permitting. Staff determined the sewer tap receipts were not required at this time since they will need to be provided for the building permit application.

**Mr. Unruh-** read the letters of opposition from Cory Cochran and Allen Platt for the record. Letters attached for the record.

**Mr. Siple-** on the two letters of opposition in placement, is that placement altogether or the location?

**Mr. Bibelhauser-** one of them is just saying they want it more aesthetically appropriate for a subdivision as opposed to a modular, more like house that would fit in their subdivision. Against the pre-manufactured building.

**Mr. Siple-** asked for copies of the letters.

Staff gave Mr. Siple hard copies of the letters and emailed copies the next morning.

**Mr. Siple-** no other questions but requests to table so he can answer the Boards questions. To be clear, this Board wants answers to staffing levels on a daily basis and hours per week, the ability to move that inside the existing fencing, and can they reduce the footprint and maybe use a smaller building?

**Mr. Unruh-** yes.

**Mr. Bibelhauser-** thinks they need to verify where the floor elevation needs to be as a result of the creek. Is it going to be sticking out 4' or 6' out of the ground? Need to verify that as part of this.

**Mr. Heitkemper-** doesn't think we're necessarily looking at a smaller building but this is 15 ½' x 46', that's why I asked if it's a trailer and I think that's their concern also. Is it a trailer or is it an office building.

**Mr. Bibelhauser-** the letters you got, you should consider something more aesthetically pleasing to the neighborhood. Asked Mr. Lopp when they submit for the building permit that will dictate how many parking spaces are required. Something will dictate that.

**Mr. Lopp-** number of employees.

**Mr. Unruh-** and that would require you to enlarge that area

**Mr. Siple-** those are building permit questions, correct? And this is just special exception for land use, correct?

**Mr. Unruh-** correct.

**Mr. Siple-** does the tabling go to the January meeting?

**Ms. Fox-** that is correct.

**Mr. Siple-** does correspondence have to be sent so many days prior to that hearing?

**Ms. Fox-** you do not have to re-notice because you are making the announcement here tonight.

**Mr. Bibelhauser-** makes motion to table to next month.

**Motion:** Table to January meeting

**Moved by:** Larry Bibelhauser

**Seconded by:** Guy Heitkemper

**Motion passed.**

**Mr. Unruh-** recused himself from items 3-7 due to personal conflict of interest.

**Agenda Item 3 – FC-11-24-48: Special Exception** – Applicant is requesting a special exception to allow mini-storage in residential suburban zoned area and in the Edwardsville Overlay District. The Elder Company, LLC. 1320 West Knable Road, Georgetown, IN 47122 (22-02-03-600-082.000-002 and 22-02-03-600-086.000-002). Section 36, Township 2 South, Range 5 East.

**Mr. Lopp-** read the staff report: The applicant is requesting a Special Exception to allow a mini-warehouse/self-storage use on a Residential Suburban zoned property. The property is also in the Edwardsville Overlay District. Ministorage is not an allowed use in a Residential Suburban zone (FCZO Appendix A Land Use Matrix) and is an expressly prohibited use in the Edwardsville Gateway Overlay District (FCZO 8.06 – I.). Warehousing and Storage are permitted uses in Office Business and General Industrial Districts in the Zoning Ordinance. The proposal includes thirteen storage unit buildings, a 400 square foot maintenance unit, and a 400 square foot office with a service kiosk. The total square footage

of storage units will be 91,800 square feet. Lot coverage is approximately 69% of the 6.79 acre lot. Eight parking spaces are located in front of the office with detention basin located at the front of the lot. The applicant is also requesting Development Standards Variances for Building materials, number of primary structures, lot coverage, and building façade transparency. Adjacent Property: To the east and south east of the property is Interstate 64; immediately to the south is the Edwardsville Animal Clinic a non-conforming use on Residential Suburban zoned property operating prior to the 2006 Zoning Ordinance; to the immediate southwest, across W Knable Road is a single family dwelling in a General Commercial Zone, Clayton Homes is located behind that property; to the west is a single family dwelling and farm on Multi-family zoned property; to the northwest is a residential suburban zoned single family dwelling (split from this property in 2022); and to the north is a large (~20 acre) residential suburban lot with a single family dwelling. Staff Findings: 1. The special exception WILL be injurious to the public health, safety, morals, and general welfare of the community. The property is currently served by a 3" water line with the nearest larger line at least 1500 feet away. Georgetown Fire Department provides the minimum line required to serve a development of this nature to be a 6" line with a hydrant within 400 feet of any building but recommends at least an 8" line. 2. The use and value of the area adjacent to the property subject to the special exception WILL NOT be affected in a substantially adverse manner. The proposed use is relatively low impact with low traffic generation. It will not generate nuisance noises or smells and will be required to meet Stormwater standards. Storage is a reasonable use with proximity to multi-family zoned property and would be located next to existing General Commercial properties. 3. The need for the special exception DOES NOT arise from some condition peculiar to the property involved. The property was recently split from a homestead (2022) to the northwest and has since remained vacant. The property is suitable for residential development consistent with its zoning and with current infrastructure allow up to 4 homes to be located there. 4. The strict application of the terms of the Floyd County Zoning Ordinance WILL NOT result in an unnecessary hardship in the use of the property. The property is currently suitable for single family developments and adjoins single family developments. 5. The approval of the special exception WILL contradict the goals and objectives of the Floyd County Comprehensive Plan. The proposed use is expressly prohibited in the FCZO for the Edwardsville Gateway Overlay District. The use does not fit into the planning documents for the area and is inconsistent with the district intents. The use is a low intensity and low traffic use, this is a Gateway district and adjacent to a "Town Center" concept and identified economic growth areas. The use would not create significant "active" economic activity desired in a growth area. Aesthetically, the use would not be consistent with existing planning guidelines. The use presents characteristics more consistent with industrial warehousing than aesthetically rural neighborhood oriented commercial with multiple large structures, low novel traffic volumes, security fencing, limited landscaping, and metal facades/unit doors. The property also lacks necessary infrastructure for fire protection/water service. Staff Recommendations: Denial due to not meeting the required justifications particularly with the use being inconsistent with the Edwardsville Gateway Plan and the Floyd County Comprehensive Plan and lack of adequate infrastructure.

**Jacob Elder**- The Elder Company, 501 Pearl Street, New Albany, Indiana. Also with him is Scott Hanna with Heritage Engineering and Justin Endris with Young, Lind, Endris & Kraft. Requested to extend the 10 minute time period and procedures be lifted since this is a very complex issue and wants to preserve the record.

**Ms. Fox**- it's up to the Board if you want to extend the time, you can also let it go for the time being and see where they are.

**Mr. Bibelhauser**- how about just start and we'll see where we are.

**Mr. Elder-** you all are essentially a quasi-judicial board, an unbiased board and it's the Petitioner's obligation to burden as to rather or not if the use variance request should be granted or denied. These standards are protected with the State and Federal government- process, due process, civil rights and so forth. There has been a recent case in Tipton County Board of Zoning Appeals v. Hope for the Hurting, 230 N.E.3d 322, 328 Court of Appeals case. It talks about the type of evidence what weight you should give to it. The evidence at minimum should be substantial and must be more than speculation or conjecture. The Indiana Court of Appeals reversed the BZA decision because the BZA Board listened more to speculation and opinions of neighbors instead of the information presented to the Board. The site is 1320 West Knable Road and it does not have water capacity out front nor sewer. Originally we were looking at multi-family use but after due diligence, we landed on mini-storage units. Trying to take into account the neighbors to the north and south and positioned the facility back off the road so that neighbors would not see the units. This is more of an exaggeration of maximum amount of 97,000 square feet. We don't intend on building 97,000 square feet but wanted to show what would fit on the site plan. The buildings facing West Knable Road both in essence would be privacy fencing built. Landscaping requirements would be determined by the Development Plan, today is just the Use Variance request. The first element states "the Special Exception will be injurious to the public health, safety, morals and general welfare of the community. The property is currently served by a 3" water line with the nearest larger line at least 1500 feet away. Georgetown Fire Department provides the minimum line required to serve a development of this nature to be a 6" line with a hydrant within 400 feet of any building". Gave the Board copies of an aerial map. Talked with Edwardsville Water this morning. On the map, between McDonalds and Red Roof Inn, there is a black dot and that is the closest 6" water line and then on West Knable Road there is a fire hydrant that is a 3" water line. Looking at what Mr. Creevy stated and what is positioned by Georgetown Fire Department, the barber shop, Circle K, Shell, Cash Saver, Indiana Land, Clayton Homes and Edwardsville Animal Clinic, none of which are within 400 feet of a 6" line. They disagree that is a standard that has to be met, if so then all of these businesses are in violation of said Fire Safety 2014. Also reached out to Sheriff Bush as well as Assistant Chief Scott McVoy of the Jeffersonville Police Department and they provided the two letters in your packet, both have many decades of experience between them and both indicate in their letters that mini storage units are no different than any other business and are not any more susceptible to crime than a shopping center or anything else in the area. He believes the special exception would not be injurious. The second prong, the use and value of the area would not be adversely affected. Gave the Board copies of another map. The star is the subject property and just beneath that is the Edwardsville Animal Clinic and we know it's not a residential use even though it's zoned as such. Across the street and caddy cornered is Clayton Homes and directly across the street is a multi-family zoned property. After looking at the acreage of the multi-family property and looking at consistent building standards in the area, at some point, if it stays zoned at multi-family, there should be somewhere between 120-150 units at some point to be built. It's important to understand that this request is not just surrounded by residential, it's between the interstate and next to 3 of the other 4 properties are not residential. In order to understand if the use and value would be disrupted at all, he reached out to Mark Hack and Troy Stiller, both with decades of experience and well respected realtors in the area. Both have done an aerial review and have found that it would not adversely affect any of the surrounding properties values. Their letters specifically outline what they looked at. The third prong, the need for the Special Exception arises from some condition peculiar to the property. Mr. Creevy states "The property was recently split from a homestead to the northwest and has since remained vacant. The property is suitable for residential development consistent with its zoning and current infrastructure allow up to four homes". Feels that the County is trying to bootstrap the property owner with only building four homes on that area, it's approximately seven acres. The property owner does have a right to seek a reasonable return on the property, it's governed by Indiana law. The subject property has many peculiar conditions. It's

located next to an interstate, which has approximately 53,000 cars a day that go and create substantial noise and fumes, surround by other uses other than residential, i.e., multi-family, commercial and animal clinic. Significant topography issues that will increase the development cost and lack of water supply and sewers at the lot line. In I-465, LLC versus Metropolitan Board of Zoning Appeals, the BZA determined that property that is adjacent to an interstate and serves as a buffer between residential neighborhoods and commercial interstate activity is a peculiarity property. Also in Bowman v. Metro Board of Zoning Appeals of Marion 331 N.E.2d 735, stating that the size of acreage, being small or large could also be a peculiarity. In Metro School District of Washington Township v. Jansen 302 N.E.2d 551, the board was justified in finding a need of a variance arose from a condition peculiar to the property. There was evidence that the unusual shape and small acreage when viewed in conjecture with the adjoining commercial use and railroad tracks made the property unsuitable for development. Metro Development versus Troy Realty-affirming the conditions of the variance, the property was situated at a corner of a heavily trafficked intersection, making it more affected by noise and fumes surrounding the area and was adversely affected by water, and lastly, another case verse Shackelford, affirming a variance where a parcel is located in a major thoroughfare and adjacent to a gas station making the site unsuitable for single family. Number four...

**Ms. Fox-** sorry, need to pause right there. The ten minutes is up. Asked the Board what they want to do.

**Mr. Bibelhauser-** if he's on item 4, I say keep going.

**Mr. Whalen and Mr. Bibelhauser-** both agreed to keep going.

**Mr. Elder-** Thank you. Mr. Creevy states that "the strict application of the terms of the Floyd County Zoning Ordinance will not result in an unnecessary hardship in the use of the property" and we disagree with that as that is a blanket statement that does not even address the right of the property owner to seek a reasonable return. In the case of Board of Zoning Appeals of the City of Witting, Lake County vs. McFadden, it does state that the determination of the existence of an unnecessary hardship is governed by all relevant factors which, taken together, indicate that property cannot reasonably be put to conforming use because limitations imposed upon it by the ordinance, and it must also be shown that the land involved cannot return and yield a reasonable return if it's only used for the allowed zoned purposes. As of right now, Mr. Creevy is stating that it should remain as residential and four homes will be enough. We have a letter from Mr. John Lopp, who has close to a billion dollars in transactions from residential and commercial, stating that would not be a reasonable return, only allowing for four residential lots. As the property sits today without having to come before the BZA, only have the by-right permitted uses: agricultural or home, farm stands, home childcares, residential dwellings, and trails or walking paths. So the relevant facts of peculiar conditions are not created by the property owner. Saying that it can only be used for residential homes, sits next to I-64, the surrounding uses are other than just residential, there is substantial amount of fall on the property, no available close sewers- it's 1500 feet away. The sent a bid to Temple & Temple to see the cost for bring sewer and water to the property and the cost was between \$225,000.00 - \$275,000.00. Take the cost of bringing in the infrastructure, the cost of the land, each lot would be about \$125,000.00. They do not believe the mini-storage will alter the character of the surrounding area when you look at how far its set back, most of the visibility will be from the interstate, they will block the majority of it with walls. The backside of it made out masonry brick, almost like privacy fence facing West Knable Road with an abundance of landscaping. Item five gets a little tricky, Use Variances are controlled by Indiana Code 3674-918.4 and the statute states that the approval does not interfere substantially with the Comp Plan adopted under the 500 series of this chapter. That is in contradiction with what has been adopted and what's in your petition. Your petition states that the



approval of the Special Exception will contradict the goals or will not contradict the goals of the Floyd County Plan Commission. Knows it may not sound like a big deal but there is a big difference on rather if something contradicts something or rather or not it interferes substantially. If you move forward, and you have your own legal counsel, if you move forward underneath element number five and not the correct statute, then you will be in violation. He has seven additional pages of how he believes they are in compliance with the Comp Plan.

**Mr. Bibelhauser**- they were in our package. Held up the packet to show Mr. Elder.

**Mr. Elder**- asked if everyone had a chance to review and would be happy to present go through. Gave the Board copies of the Comp Plan and Mr. Creevy's response. Mr. Creevy's comments are highlighted in yellow and Mr. Elder's has marked in blue everything he just cited. They just simply disagree on what the Comp Plan says. On page five, everything in blue says "Development, redevelopment, or change in the use of land within Floyd County shall be considered on the basis of its immediate and future impact on the public health, safety, welfare, population density and whether the proposed development furthers the interests of the Comp Plan" we find that it does. The next one talks about the comp plan policies shall strive to protect the rural character of Floyd County is maintained and preserved. Through the development of conservation development design, sustainable ecological design, and very important promotion of low-impact infrastructure choices. We retained a traffic engineer and her letter is in your packet. Mini-storage, cemeteries and churches are the lowest impact uses that a municipality can have, feels they meet that and follows the comp plan. Talks about the request for special uses should be measured against the adopted land use policies and objectives of this document. Factors for consideration includes the relation of the development, redevelopment or change in land use to the following factors. He has highlighted the 12 bullet points. Nuisance potential to existing or planned future land uses, Proximity to existing like-use development, population density, proximity to supporting land uses, traffic patterns and thoroughfare plan, public safety systems including fire protection and law enforcement, water and sanitation systems, public school system, topographic and geologic characteristics, preservation of natural characteristics including sight-lines, site drainage, loss of agricultural usage, and any other factor reasonably related to protect the health, safety and general welfare of the public or further the interests of the comp plan. These are the top twelve things you need to look at and in they believe they meet all twelve and are in compliance. They certainly do not substantially interfere with the comp plan that has been adopted. Also on page five, it talks about the intensity and type of development shall be limited by the ability of infrastructure proposed and existing to service the new development without materially decreasing the level of service to the existing development or creating safety concerns. The use variance is low intensity and does not require any additional service other than what currently exists and will not harm the environment or create safety concerns. On page six of the comp plan, requests for changes in current land use or proposed developments shall be measured to determine the impact these proposed changes have on level of service provided by public ways, places, structures and utilities. Proposed changes shall be required to review the comp plan and other relevant studies/plans in order to determine how the proposed development interacts with the community's interest and its potential effects on public ways, places, structures and utilities. Will not impact the roads since it's a low impact generator. Also on page six, Development, redevelopment or change in use of land within Floyd County shall preserve the natural characteristics and scenic quality of the land to the greatest extent possible. Instead of attempting to maximize the acreage, we have designed it in a way to preserve the natural characteristics by agreeing to use masonry products that face West Knable, like similar other storage facilities in Floyd County. Page 23 of the comp plan, the second highest priority of the community moving forward was locally owned restaurants, retail and businesses. He lives five minutes away with his family and they will own and operate these storage units. As a locally owned business, this meets the second

highest preference of the comp plan. On page 23, although the survey was extremely, the main challenge will be finding a funding solution that are realistic but also satisfy the residents of the community. On page 24, in May 2015, Professor Larry DeBoer, from Purdue University spoke regarding local government finance. In his discussion, he addressed the attributes of land use and Floyd County. Key points from the discussion where the fact Floyd County has one of the lowest property tax rates in the State of Indiana, it has a smaller than state average amount of taxing entities, and this is important, it has a smaller than average amount of commercial and industrial lands available. The comp plan also identifies the planners, plan commission, board of zoning appeals, commissioners because it talks about all these new amenities but they don't raise taxes or anything for it. An idea, is The Highlander Point and Edwardsville Gateway TIF, which is adjacent to this property, brings in about \$119,000 a year. There is about 400 properties that exist. That is the revenue spent last year. This development will be somewhere between \$4-5 million and if you extend the TIF, you could capture about \$130-140,000 a year. You could create grants for local businesses, upgrade facades, you could do a lot of things the other communities are doing.

**Mr. Heitkemper-** asked if he was about done. [Second ten minutes was up]

**Mr. Elder-** Yes, Sir, I know this is long, just trying to preserve for the record for the next steps. Of the ten guiding principles on page 27, the three paramount principles of Floyd County to meet the stated community values of the three: Preserve open spaces and farmland, strengthen and direct development towards existing communities, and foster distinctive, attractive communities with a strong sense of place. We could've maximized this even more and we chose not to, to keep some level of green space out front with the detention basin, extended the buffer yards on either side, so feels like they meet those. Wants to make a clear record and enter exhibits 1-12, a lot of it has been presented- the case laws and the other documents he presented tonight.

**Mr. Whalen-** asked if he owns the property yet or if it's contingent on purchase.

**Mr. Elder-** it's contingent on this approval. If approved, they'll close in a week.

**Mr. Whalen-** you mentioned the site work will be extensive and the cost will be extensive if this was developed as residential, how is that any different than basically scraping everything off and adding a bunch of hardscaped infrastructure?

**Mr. Elder-** he is saying this would be more expensive. Doing the site work here, the length of the pads themselves, there will be additional site work needed for mini storage versus four homes.

**Mr. Whalen-** thought he was making the argument that this was better than the homes.

**Mr. Elder-** no, not from a cost standpoint.

**Mr. Whalen-** asked why asking for a variance versus a zoning change.

**Mr. Elder-** because this is a prohibited use so even if it was rezoned, it wouldn't allow this within the base zoning. It is in the Edwardsville Overlay and that is a prohibited use so you have to seek a use variance. Discussed with Nick and regardless it would be back in front of you all so either way it would be in front of this board.

**Mr. Bibelhauser-** with the slope of the building, thinks the buildings should be rotated 90 degrees. Will need retaining walls or something to be able to build all of those buildings.

**Mr. Elder-** we're trying to limit anything the surrounding property on West Knable could see. Maybe they need to rotate them. The most important thing, if he was a neighbor, he would want the long lines that would essentially a fence of brick.

**Mr. Heitkemper-** the slope was his concern too.

**Mr. Elder-** there will be a substantial amount of dirt work. They don't intend to maximize and build 90,000 square feet. The first phase will be around 30-36,000 square feet and then if it builds out, maybe move on because there is a substantial amount of dirt work.

**Mr. Heitkemper-** asked if anyone would like to speak in favor.

**Garret Dunaway-** Lopp Commercial Real Estate, 1190 Wildwood Lopp NE, Corydon, IN 47112. His client, Larry Ragland hired him and Lopp Real Estate to market and sell the property that is being discussed. They first put it on the market in late 2022, garnered a lot of interest and been under contract three times. Those contracts fell apart for various reasons. The first contract the user wanted to use the property for a trucking company but the County Engineer ended up denying this use as the road was not wide enough to support semi-trucks. The second time under contract, the user wanted to use the property for multi-family or assisted living but because of sewers, it was too expensive for him. Now the third time under contract and as Jake said, initially looked into multi-family use knowing the potential issues with sewer but ran into the issue of water pressure. Can only put about four homes on the property due to the water pressure. Due to the lack of utilities and infrastructure at this property, it really narrows the uses for this. This side of the corridor has really lacked development and this is an opportunity to develop this side of the corridor and can benefit Georgetown as the Georgetown community continues to grow. He and Lopp Real Estate believes this is the highest and best use for the property that can benefit the community; it makes sense for the buyer and seller and community.

**Larry Ragland-** 1404 Edwardsville Galena Road, property owner and lives two blocks around the corner, drives past the property every day. Bought the land as an investment. Thinks this is the best reasonable return, is a much needed structure with low impact traffic.

**Mr. Heitkemper-** Asked if anyone else would like to speak in favor. No one came forward. Asked if anyone would like to speak in opposition.

**Ruth Shumaker-** 1412 West Knable Road. Her property is the largest property there, 20 acres and is north of what they are wanting to build. Rejects the proposal because it is residential and suburban. Feels like the hill is bad and her property has a slope that comes from that and the weather comes down and goes into her creek and spring and flows into the lake, this is not good for them. They talked about the truck, this is all stuff that will flow into her property. Interferes with the public use of their property and until someone buys all the property below her, then they can see what they can do with it. Should be rejected, it's unhealthy, don't know what kind of lights, it should not be there.

**Rebecca Hernandez-** 1312 West Knable Road. Opposed to this due to the water. They say the drainage will be sufficient but there is a lot of drainage right there where the water runs off. If they start messing with that hill concerned is will make her basement flood. The pond they planned, is that sufficient to hold

the amount of water that they will disrupt by making that ground impervious, its six acres. They said they don't intend at this point, but once they get the okay, they can expand to the full expansion. It affects neighbor's properties, it affects the lake that children swim in. Submitted studies from Purdue and Penn State on stormwater runoff. If this is approved, she requests a tree border around the whole perimeter, front and sides, at least 10' tall trees to help with the water. It is a very steep slope. We have no information on it, they just say it will meet Floyd County guidelines and that is very vague. How do they intend to meet the guidelines for the water that affects all the residents in that community? Directly across where they intend the driveway, the road is very narrow, there is no apartment complex.

**David Howell-** 1506 Pirtle Drive. Concerned about keeping the lake clean.

**Darlene Rush-** 1531 Lakeland Drive, Georgetown.

**Mr. Heitkemper-** asked if anyone else would like to speak in opposition. No one came forward. Closed public comment.

**Mr. Elder-** all very reasonable concerns. This is not their first development and lights, drainage and water run-off is every development and Floyd County has standards they will have to follow. Will not have lights bleeding off the property, will be a secured 24/7 gated up front, limited access in the evening. Keep lights on the building, not anything facing the road. Floyd County drainage laws are more stringent than a lot. Any development will have a pre- and post- run-off that they will have to meet. Working with Heritage Engineering who will ensure they meet the standards. In regards to the lake, with it being on the other side that would be something they take into consideration during the drainage planning to see if any water run off would get there.

**Mr. Whalen-** asked if there were any calculations done for the retention pond or if it was just a place holder.

**Mr. Elder-** this is more of is the use approved. If it is, then we move forward to have a development plan approval, might even have to be back in front of the plan commission, and work with Mr. Creevy to make sure everything is met. We'll submit our plans, they send out to their third party engineer and we get it back with comments to make sure everything is taken care of.

**Justin Endris-** Young, Lind, Endris & Kraft at 126 West Spring Street. We are not requesting a variance for drainage. As you know, with the drainage ordinance, the post run-off will be less. So that's not really before the Board. We intend to comply with that.

**Mr. Heitkemper-** once again, wants to state that we do not have a full board and it takes three to pass and if it happens to fail, it would be a year before you can come back again. Asked the Board for a ballot.

**Mr. Bibelhauser-** asked Mr. Lopp for clarification on the Edwardsville Gateway District. We listened to a lot of arguments here tonight, his biggest thing is this is in the Edwardsville Gateway District and that makes this totally different. Even though we say all this stuff in the Comprehensive Plan about maintaining rural this that and the other, the Gateway District has a very different set of standards.

**Mr. Lopp-** it does.

**Mr. Bibelhauser-** wants to feel confident saying this is in that Gateway District and it doesn't meet our standards for the Gateway District, as your office supports that.

**Mr. Lopp-** provided background, in 2011 the County conducted the Gateway District Plan and it included three sections for that Gateway, and included the Town Center section which this property is adjacent to, included the campus component which is the Novaparke campus and where the Edwardsville School is considered an old town component. The rationale was to create distinct Gateways into the community. There are only two that the County has control of for planning, one if the Highlander Point area off the Greenville exit and this area off the Georgetown exit. The underlying plan was to create a commercial area that had mixed uses that had a town center type of approach, a distinct area that's why they conducted a sub-plan for that area.

**Ms. Fox-** so do you believe this would substantially interfere with that plan for the Gateway village, that the County has.

**Mr. Lopp-** as Director of Operations and at that time, the County Planner, yes.

**Mr. Elder-** asked if he has the right to cross examine

**Mr. Heitkemper-** it's closed

**Ms. Fox-** you can allow him to state something if he wants to state something but he doesn't get to ask staff

**Mr. Whalen-** thinks they should allow it since it was an opinion

**Mr. Bibelhauser-** just a couple of minutes, okay.

**Mr. Elder-** thank you, this will be quick. Had this conversation with Mr. Creevy, finds the Gateway interesting when it talks about the three different areas, this property is not even in that area. So the Town Center, this is adjacent to.

**Mr. Bibelhauser-** agrees that it is not in the Town Center.

**Mr. Elder-** what happened with the Gateway, they came through and made a big circle around the three different just to say

**Mr. Lopp-** the Gateway was part of the original 2006 zoning, it wasn't an addition to the 2011 zoning. So the Gateway district was created in 2006 and then MSKS came back with the plan for that district. The overlay district was created as part of the original change of zoning, not in 2011.

**Mr. Elder-** last comment, thinks this would be a good catalyst. Has lived off the exit and there has been zero significant development in that entire corridor for well over a decade going from 64 to West Knable Road. The free market should dictate within reason on who is allowed. If you look at the plan, while he loves the plan, it looks like Carmel Indiana and we're not Carmel Indiana. He lives here and if we continue to rely on the studies that we pay for, would like for anybody to look and say what significant development has been made from 62 through West Knable Road in that Town Center area.

**Mr. Bibelhauser**- read the ballot: Docket FC-11-24-48, Petitioner Elder Company, LLC. After careful review the Board finds that: 1. The Special Exception WILL be injurious to the public health, safety, morals, and general welfare of the community because: The property is currently served by a 3" water line with the nearest larger line at least 1500 feet away. Georgetown Fire Department provides the minimum line required to serve a development of this nature to be a 6" line with a hydrant within 400 feet of any building but recommends at least an 8" line. 2. The use and value of the area adjacent to the property subject to the special exception WILL NOT be affected in a substantially adverse manner because: The proposed use is relatively low impact with low traffic generation. It will not generate nuisance noises or smells and will be required to meet Stormwater standards. Storage is a reasonable use with proximity to multi-family zoned property and would be located next to existing General Commercial properties. 3. The need for the Special Exception DOES NOT arise from some condition peculiar to the property involved because: The property was recently split from a homestead (2022) to the northwest and has since remained vacant. The property is suitable for residential development consistent with its zoning and with current infrastructure allow up to 4 homes to be located on the property. 4. The strict application of the terms of the Floyd County Zoning Ordinance WILL NOT result in an unnecessary hardship in the use of the property because: The property is currently suitable for single family developments and adjoins single family developments. 5. The approval of the Special Exception WILL interferes substantially with the Floyd County Comprehensive Plan because: The proposed use is expressly prohibited in the FCZO for the Edwardsville Gateway Overlay District. The use does not fit into the planning documents for the area and is inconsistent with the district intents. The use is a low intensity and low traffic use, this is a Gateway district and adjacent to a "Town Center" concept and identified economic growth areas. The use would not create significant "active" economic activity desired in a growth area. Aesthetically, the use would not be consistent with existing planning guidelines. The use presents characteristics more consistent with industrial warehousing than aesthetically rural neighborhood oriented commercial with multiple large structures, low novel traffic volumes, security fencing, limited landscaping, and metal facades/unit doors. The property also lacks necessary infrastructure for fire protection/water service. The Board of Zoning Appeals hereby Denies the Petitioner's Special Exception at the meeting held on the 9<sup>th</sup> day of December, 2024.

**Motion:** Deny

**Moved by:** Larry Bibelhauser

**Seconded by:** Scott Whalen

**Motion denied.**

**Mr. Heitkemper**- it's been denied. So these are all mute, we don't do anything with the next

**Ms. Fox**- assume you want to withdraw those at this point in time.

**Mr. Elder**- would like to table them indefinitely or until there is a reason.

**Ms. Fox**- don't know if we can table them indefinitely.

**Mr. Elder**- I'll move to withdraw.

**Ms. Fox**- okay. The Applicant moves to withdraw items 4-7, is that correct Mr. Elder?

**Mr. Elder**- that is correct Mrs. Fox. Question, if for some reason we are back here in a year, do we have to repay our fees for those variances?

Ms. Fox- we'll leave that for Staff to answer

Ms. Adams- explained that filing fees are non-refundable and non-transferrable. Typically when a docket is withdrawn, the fee is forfeited. Any new applications would require new fees. Tabled dockets are still pending, therefore do not require additional payments. [This was also explained to Mr. Elder prior to filing for the variances. Mr. Creevy recommended applying for the Special Exception first to make sure approval was granted before filing for the variances because it could be a waste of time and money if the Special Exception was not approved. Mr. Elder chose to file for the Special Exception and the Variances at the same time.]

Ms. Fox- lets table it for now since Nick is not here and next month Nick can answer that question for us.

**Agenda Item 4 – FC-11-24-49: Development Standards Variance** – Applicant is requesting a variance to allow building material requirements to only apply to sides facing West Knable Road. The Elder Company, LLC. 1320 West Knable Road, Georgetown, IN 47122 (22-02-03-600-082.000-002 and 22-02-03-600-086.000-002). Section 36, Township 2 South, Range 5 East.

**Agenda Item 5 – FC-11-24-50: Development Standards Variance** – Applicant is requesting a variance to allow 13 structures to be classified as primary structures. The Elder Company, LLC. 1320 West Knable Road, Georgetown, IN 47122 (22-02-03-600-082.000-002 and 22-02-03-600-086.000-002). Section 36, Township 2 South, Range 5 East.

**Agenda Item 6 – FC-11-24-51: Development Standards Variance** – Applicant is requesting a variance to allow 70 percent lot coverage in a Residential Suburban district. The Elder Company, LLC. 1320 West Knable Road, Georgetown, IN 47122 (22-02-03-600-082.000-002 and 22-02-03-600-086.000-002). Section 36, Township 2 South, Range 5 East.

**Agenda Item 7 – FC-11-24-52: Development Standards Variance** – Applicant is requesting a variance to allow for no transparent requirements for front facades. The Elder Company, LLC. , 1320 West Knable Road, Georgetown, IN 47122 (22-02-03-600-082.000-002 and 22-02-03-600-086.000-002). Section 36, Township 2 South, Range 5 East.

**Motion:** Table items 4-7

**Moved by:** Larry Bibelhauser

**Seconded by:** Scott Whalen

**Motion passed.**

**Motion:** To Adjourn

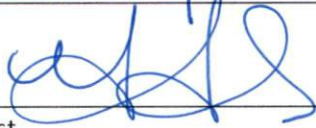
**Moved by:** Scott Whalen

**Seconded by:** Guy Heitkemper

**Motion passed unanimously.**

Adopted this 10<sup>th</sup> day of February, 2025.

  
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