

# Floyd County Board of Zoning Appeals

## Minutes

The regular meeting of the Floyd County Board of Zoning Appeals was held on **January 13, 2025 at 5pm** at the following address:

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

### **ROLL CALL**

**Present:** Victor Unruh, Guy Heitkemper, Scott Whalen, Bill White

**Absent:** Larry Bibelhauser

**Other:** Kristi Fox, Nick Creevy, Gabbrielle Adams

**Mr. White-** the minutes from December 2024 BZA meeting were not ready for approval and will be approved at the February 2025 meeting. Before we get into the old and new business, as is customary for the first meeting of the year, we will begin with electing officers for the 2025 year for Board of Zoning Appeals. In order to conduct the elections, turned the meeting over to the Boards Attorney, Kristi Fox and whoever is elected to President can step into that roll.

**Ms. Fox-** First need to vote on Chairman/President of the Board to serve for the year.

**Motion:** Bill White for President

**Moved by:** Victor Unruh

**Seconded by:** Guy Heitkemper

**Motion passed unanimously.**

**Ms. Fox-** next is for appointment for Vice-President/Vice-Chairman for the year.

**Motion:** Vic Unruh for Vice President

**Moved by:** Guy Heitkemper

**Seconded by:** Scott Whalen

**Motion passed unanimously.**

### **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.

**Nick Creevy-** Director of Building & Development. This is an Administrative Appeal for the Sporting Club at the Farm. They received a Notice of Violation on September 9, 2024 for violating a condition of their Special Exception approval. The violation was for shooting within the prohibited 300 yard boundary of adjacent properties. The appeal was received on October 8, 2024 and was within the timeframe required

for appeals. Included evidence were the complaints that were issued for the violation, the complaint investigation and the original ballots for which the condition was for. As a body for an Administrative Appeal, you are reviewing the decision and determining if the appeal should be approved. That would determine that Staff decision was incorrect and the appeal would be upheld because the findings of fact failed to support the decision of Staff. The appeal should be denied if the findings of fact support the administrative decision. So you would be denying the appeal from The Farm stating the findings of fact are in fact correct. You could also table consistent with the Rules and Procedures of the BZA. The report from 9/9/2024 would be the evidence that you would be reviewing as well. As Staff, really don't stand and defend our decision, it's up to the Petitioner to do that. Can help with additional questions on process or additional details but he has already made the argument in the Notice of Violation.

**Mr. Unruh-** so we treat the Administrative Ballot like any other ballot, correct?

**Mr. Creevy-** correct.

**Bobby Brooks-** 840 Pfrimmers Chapel Road, Corydon, Indiana. This appeal is for the complaint of shooting within the required limited area, 300 yards from a neighboring property. Every shooting law or stipulation thing that has been put in place up to this point was because of guns. The sound of guns, the 300 yard restriction, everything was based off of shotguns. They have shot archery on this side of the property for the whole time they've been open and no issue or anything said with shooting archery. Everything they've put in place for restrictions on that side of the property, 300 yard restriction and decibel reading, was due to gun shooting. Nothing was ever said about archery. The archery course is in a very safer area, it is part of the property they utilize as the archery course for their members and guests to shoot archery. No reason they shouldn't be able to use this part of their property to shoot archery. Understands in the beginning what the complaint was but it was always about guns. Now their bringing up archery and archery is not an issue, it's not a problem. It would adversely affect their business to not be able to utilize this area in archery shooting.

**Marty Schindler-** 7845 Four Leaf Drive, Greenville, Indiana. Course and Land Manager at The Farm. He read through all the previous documents and approvals, he came on board in April 2024. Archery was never mentioned in any document from this Board or Nick Creevy or anyone. That's why we're asking for an appeal on this. It seems like at this point, we're just throwing stuff against the wall and seeing what sticks. We're in here more than you want to be. The 300 yard boundary was based on the shotgun shooting. Archery was never mentioned, the word archery is never used. There is actually a stipulation in 2020, originally in the documents from 2019, it was stated outside the original course, the 24 shooting station, the property could only be used for farm use. In 2020 there is an amendment that clearly says that restriction for the rest of the property was removed. Which would open that up to anything outside of shotgun shooting because that was to be highlighted on the map for 24 stations. So in 2020 the Board actually opened us up to use that property for anything outside of regular shotgun shooting.

**Mr. White-** asked if the Board has any questions.

**Mr. Unruh-** asked about the maximum range an arrow can travel from of a compound bow.

**Mr. Brooks-** the maximum range on a compound bow, maybe be 200 yards

**Mr. Schindler-** 200 yards would be if I stand and shoot the arrow in the sky like this (imitates shooting an arrow in the sky), it's not like pulling back for a direct shot (imitates shooting arrow straight out in front of him).

**Mr. Brooks-** no targets towards any neighboring property, they shoot inside their own property, back on their own property, with safe backdrops. Archery is the safest sport there is.

**Mr. Schindler-** whenever the group that set those targets, there was concern about proximity to property but we vetted everything and all shots were 100% away from neighboring property all the way around, whichever side you looked at.

**Mr. Unruh-** are you hunting or just targets?

**Mr. Brooks-** it's target shooting, like scholastic kids program and have an IBO tournament. Used to have monthly shoots but no longer have those at the time. It's shooting foam targets.

**Mr. Unruh-** so we have pictures here, does the trail cam belong to you, where we've gotten the pictures from?

**Mr. Brooks-** no sir.

**Mr. Unruh-** so that trail cam is fairly close to the property line, is it not?

**Mr. Brooks-** yes sir.

**Mr. Unruh-** hates to bring this up in public but there is actually a picture of a guy...

**Mr. Brooks-** taking a leak

**Mr. Unruh-** going to the bathroom.

Mr. Reilly from the audience stated he was standing on his property line.

**Mr. Unruh-** excuse me sir

**Mr. White-** stated he would have a chance to talk in a moment.

**Mr. Unruh-** does not want to see them here either, the last thing he wants to do is to spend his night talking to someone who cannot follow the procedures. Reluctant to even go one with this with the way he feels but if you do what we set forward to you then there would be no reason to come back in here. If you had met every guideline we set with you, there's no reason to come back here. The reason you're back in here is because you didn't take test for the lead the way you were supposed to take the test for the lead and he could go on. [Some interruption]

**Mr. Schindler-** this is about archery

**Mr. Unruh-** knows what this is about. Mr. Brooks made the statement about being back in here. He is referring to that statement, it was made publicly so he is responding to that statement. This Board, how

many years ago, approved you guys to go out there. He loves hunting and shooting sporting clays so it's hard for him to sit here and feel like he's scolding guys for not doing what they agreed to do. From his standpoint, do what they agreed to and they don't have to come in here. Question for Nick, does the restrictions say shooting shotguns or does it say shooting?

**Mr. Creevy-** so the conditions say no shooting within 300 yards of any property line or public roadway.

**Mr. Unruh-** it does not say gun

**Mr. Creevy-** No.

**Mr. Unruh-** has never seen anyone throw an arrow. Never seen an arrow thrown to kill a deer or to do any kind of archery. It has to be shot. That says shooting. We're done, that's as clear as can be. Let's not try to slide or cut the hairs, it's shooting. It's within 300 feet, stop it. Just abide by what we gave you guys. Does not like to sit and scold, would love for them to be able to take care of the youth and do the things they want to do but do what you agreed to do. It's shooting, an arrow is being shot within 300 yards.

**Mr. Heitkemper-** on Five Mile Lane, he can see the shooting stations. Which direction are they shooting when at the stations?

**Mr. Brooks-** North

**Mr. Heitkemper-** and its 73 yards from the property line, that's what's on your paper, correct?

**Mr. Brooks-** maybe so

**Mr. Heitkemper-** the pictures we have, how close were they to the property line?

**Mr. Brooks-** apparently close to the property line but 100% of the range was on our property.

**Mr. Heitkemper-** it was on your property but you don't know how close they were to the property line.

**Mr. Brooks-** yes, sir. It's still unclear to him where the property line exactly is. That is something that he is going to have Mr. Ruckman [surveyor] come back out to redo that property line. To make sure they know where the property line is.

**Mr. Heitkemper-** not real familiar with archery, when he was approved before, he thought it was shooting. Thinks they specified shooting would be a projectile or bullet explosive, not necessarily a firearm, we were looking at shooting. What is the kill zone range for a deer, how many yards?

**Mr. Brooks-** like 40 or 50 yards

**Mr. Heitkemper-** that is what we looked into before and saw that also. Saw that the range for shooting an arrow is anywhere from 200-400 yards so the 300 yards would be respectable and the 73 yards would actually be pushing it. If someone shot an arrow and they're 73 yards from it and if someone accidentally, goofing off, you know it happens, then the neighbor is in a kill zone possibly. That's something to keep in mind because 73 yards, 200+ feet is getting pretty close to where there is a danger to the neighbors.

**Mr. Brooks-** none of the targets have ever been towards a neighbor.

**Mr. Whalen-** question for Nick, the September 2021 minutes, seems to be a lot of discussion around shooting and archery events. There were comments from the Board discussing gun shooting. Sees a lot of ambiguity in those meeting minutes. There was talk about the buffer trees along the Reilly's yard, talking about the major events, says doesn't think archery is a problem, it's the guns, we need to define shooting events. There seems to be an effort to add shooting to those conditions. Tend to agree that shooting guns, shooting archery has not been well defined in the minutes.

**Mr. Creevy-** agrees that archery was not really discussed or considered in the original approvals, the emphasis was on gun shooting. The September 2021 request, they asked for additional events, specifically weddings at the farm. Given that there is no specifics otherwise, shooting is shooting. If archery required a different doctrine then that should be defined. Otherwise, it would be under the umbrella of the general shooting restriction.

**Ms. Fox-** with Indiana Code 14-22-31.5-3 it defines shooting ranges. Again, we already talked about that restriction clearly says shooting. It doesn't say gun shooting or rifle shooting, it says shooting. Shooting range is defined as an area designed and operated for the use of archery, rifles, shotguns, pistols, muskets, or similar firearms that are fired at silhouettes, skeet, trap, paper, stillboard, or other similar targets. So a shooting range, which is what they are operating, is defined to include archery. Think you'll have to decide if they were never approved to do archery and they're saying they didn't ask for that, so they were doing it when they shouldn't have been. Or it's a shooting range which includes archery. Maybe they can answer this question, but did not find anything in the statute that suggests you can get an arrow off a bow in any manner other than shooting it and your restriction says shooting. It doesn't define gun shooting, it's very general and it's shooting. If they want to change that to be specific to a different boundary for archery, they should ask for a modification of that condition.

**Mr. White-** asked if the Board has any other 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.

**Jonathan Hughes-** 111 Monument Circle, suite 2700, Indianapolis, Indiana. Attorney with Bose, McKinney & Evans. Representing Paul & Julie Reilly at 3934 Five Mile Lane. They are some of the individuals who complained about this as well as Mr. Andrew Loesch. Has an additional affidavit signed by Mr. Loesch. Referencing Mr. Unruh's comments back in August when we were before you, referenced a number of issues we have with the range and this Board made a decision that we are very grateful for, finding the expansion shouldn't happen. That same weekend, right after we had that hearing, is the archery event you see photos of. So within just a few days of this Board saying to follow the rules, this is the problem that we've had. His and his clients experience with their neighbors, is that following the rules is just not something that they've done. Not only have they been before you on a couple of occasions but this matter itself has continued on two separate occasions because Staff requested that the shooting club provide notice to the neighbors about this meeting and they didn't do it. We were back here in December and they didn't do it again. They said that was really a Staff problem, he completely disagrees with that, he has spoken to Mr. Creevy on a number of occasions and he always responds to my email requests and I'm sure it does for everyone. Mr. Loesch's affidavit from back in August indicated he found arrows from the range in his in-laws yard, which borders the range. Mr. Loesch has updated his affidavit that shows he has found two more arrows on the property in December. So to say the arrows are staying on the property is just not true. He agrees that shooting means shooting, agrees with Ms. Fox, that's what Indiana State law says. Mr. Whalen, your comment about the 2021 meeting, would note that there was one condition about

events and that event, this Board specifically said gun shooting events. So he reads that as the Board knows when it wants to say gun shooting- puts gun in front of the word and when it doesn't, it just means shooting. That would be a typical statutory interpretation Agrees with Staff and how this was handled. Knows Mr. White said at the last meeting that this Board would determine whether there's a revocation at a separate proceeding before you but on behalf of his client, he has to reference to the Zoning Ordinance in Floyd County which says that if evidence is presented to you that conditions are violated then this Board has a duty to revoke the permit. Respectfully asks to revoke the permit, at the very least uphold Mr. Creevy's decision and deny this appeal. Just to go over the letter that you all were referencing, pages 8-47 are going to be pictures that show various operations going on, people coming and going at the shooting station, looks like they are trying to find where this trail camera is. Then starting on pages 48-55 and then 57-85, you'll see folks shooting at this very station. On page 56 you'll see the answer to how far it was, his clients measurement using a tape measure and standing on the property line and reaching across to see how far it was to the cone that was placed there. The metal post you see in the photos and in that particular picture on page 56 is roughly 55 inches from the cone to the metal posts, which his client says is the edge of their property. So within 55 inches with his clients' property. Also doesn't want to talk about the individual that Mr. Unruh mentioned but an individual taking a leak on someone else's property is a reason they don't want them that close to their property. His client just wants to enjoy their property. That is on page 3 of your letter, on page 4 you see what that individual is looking at which is his clients house. That's how close the house is, not just some random part of their property, they have a lot of acreage and this is right by their home. His client finds it to be harassing and is done with it. Will note that after the last meeting, his client and Mr. Crea did speak over text before the archery event and his clients request was "you have over 400 some on acres of property, just don't shoot archery by my house" and that very weekend they had over 1500 people coming and trapesing across their property and it's time to put this to an end. Agrees with Mr. Unruh and doesn't want to keep coming here from Indianapolis, his prayer for relief would be that they respect the rules of this Board and they wouldn't have to be back here again but not sure there's any way to do that other than tell them to stop doing what they're doing.

**Paul Reilly-** 3934 Five Mile Lane. Mr. Brooks stated the youth shooting, there were over 1600 registered shooters at that shoot, that field was full and it was over three days. Almost every one of the shooters was adults and walked behind his house on this path that they created for what they feel is to be harassed. Wants the Board to know that you can shoot a bow over 300 yards easy, just because a lot of people don't draw a bow back correctly. If you're drawing back and aiming in the air, that arrow has a lot of time to travel before it hits the ground. They felt uncomfortable for three days and were harassed for three days because of this shoot. It went on and on and it's ridiculous how they've been treated. He brought up the archery targets in the past that wasn't there in 2019, they moved it over there around 2020 and they're not facing north, they're facing west. When they would have their club shoots, they would be bring in 3D targets and faced them directly towards his property. Never felt comfortable and can't walk their property when they have shoots. Their 3D targets were facing his property line and they were shooting at them. During this shoot, with their 1600 shooters, they had their youth shooters shooting parallel with his fence that his wife walks almost every day, she couldn't even walk around there with 6 kids shooting down parallel the fence line at 3D targets with arrows flying down there. Why would anyone want to treat a neighbor like that, they're tired and sick of it, want to be treated right and be left alone, want to quit coming in here all the time.

**Mr. Hughes-** gave copies of his documents and Mr. Loesch's affidavit to Nick for review before submitting to the Board for record.

**Andrew Loesch-** 4150 Five Mile Lane. His mother law's property is 4166 Five Mile Lane and that is the property the arrows were found from Mr. Brooks' shooting. His question is, they have four-wheelers, they hunt, they enjoy their land, and what's aggravating to him is, he's supposed to give up his time back there because they are having an archery shoot that they're supposed to be 300 yards away. If they just follow the rules they agreed to from the beginning of all of this, we wouldn't be here. He is sure there's more arrows back there but does not go back there looking for them. He has stumbled across them while cutting wood. The arrows he found this last time, were about 50 yards on his property. Not sure where the target was at but did see the guy back there putting the targets up. They were standing on his property line as well as Mr. Reilly's. They have kids, asked who is liable if they get shot by an arrow back there. It's during the time of year that you don't have to wear orange but if you're 300 yards away, more than likely, it's going to hit a tree or something like that before it hits his property line. Doesn't want to be in here anymore either but seems like they are not following the rules they agreed to and it's very aggravating to all of the neighbors.

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

**Mr. Brooks-** the highest thing they hold in regards to their club is safety. Safety is paramount in every level, safety is paramount in every event. It was never in his intentions to have a bad neighbor issue. Felt like this was a very positive impact on the County and community and on their neighbors. Wanted to cultivate those relationships, inviting neighbors to participate and be part of this. Still his goal to have a positive impact on the County and community. The archery event they are talking about brought in over 2 million dollars of revenue to our County over those three days with the tourism dollars. They're talking about raising taxes and funds in Floyd County and when we host these types of events, all of our events have a huge positive impact, financial impact on our County. Wants to be a good neighbor. Safety is paramount on every level. All those events are all vetted. How those arrows got, if they were our arrows, if they weren't. They find things on their property as well, shotgun shells, arrows, things from the past because that has always been a hunting property. Just this year, two tree stands and trail cameras off the neighboring property, they were having tree stands, trail cameras and deer hunting on their side of the property. But when they talk about how close we are to their property, okay, maybe we were that close but we were under the impression that 300 yard restriction was solely on the use of guns, okay. Never ever was it discussed that archery was involved within that. Okay, so that was not discussed and that was not us not following any rules. We were close but that's still our property. That's like anybody being on their own property and you neighbor saying "that's far enough, don't come any closer to my property", well from here to there is still my property. They are the only club in America, traveled extensively and shot all over the Country, there's not another club with this type of restriction, okay. There's not another club with this type of restriction, holding a club to the regards of not shooting that close to their property line. It's unheard of but we're going along with it, we haven't shot guns, so we're respecting that but it was never an issue so it wasn't intentionally that we were shooting archery and saying "well we're just going to do this" because it's not the case. Everything we do, we truly take safety at the forefront and we're truly are making a positive impact on what we do in our County, with our people and including our neighbors, every one of our neighbors, okay, we want to be good neighbors. Thank you.

**Mr. Unruh-** I got a question for you, number one, I want to thank you for what you bring into the County. The reason they approved this to start with was because it was a good project for the kids and a good use of the land. Secondly, you're saying safety is of the utmost importance, let's say you didn't have to abide by 300 foot [yard] for archery, you think the shooting on the property line is safe? Wouldn't you have

some kind of buffer that you would instill on your own for safety? Not be on the person's property line. What do you think is safe?

**Mr. Brooks-** Umm, well, if *you* are hunting your *own* property...

**Mr. Unruh-** No, I'm asking you. On this particular property, where you have hundreds of people shooting, you said safety was the number one important thing

**Mr. Brooks-** yes, sir.

**Mr. Unruh-** what's safe in your opinion?

**Mr. Brooks-** I mean, we are shooting back on our own property.

**Mr. Unruh-** I understand but I'm asking how much buffer.

**Mr. Brooks-** I would say 100 feet.

**Mr. Unruh-** Okay, thank you.

**Mr. White-** asked if any other Board members have any questions.

**Mr. Whalen-** can you take us through the procedures, was there someone with the event with these groups or they out on their own?

**Mr. Brooks-** it was put on by an organization called Total Archery Challenge, they travel around the Country to different clubs hosting this same event, and it's growing and hosting more events every year. With that being said, they control, they came in and just put on their own shoot. So it was on our property, it's great for the community and it's a professional run event.

**Mr. Whalen-** so did they set the targets?

**Mr. Brooks-** yes sir and we vetted them.

**Mr. Whalen-** and did each group have a representative from that organization

**Mr. Brooks-** that stays with each range. They put up five ranges and it's called extreme the Total Archery Challenge is an extreme archery event to where they walk. They want every course to be a challenging hike as they don't shoot these targets. So it's a hike and they want that trail to be close to a mile that's why it's taking up so much space to put up five ranges.

**Mr. Whalen-** okay, thank you.

**Mr. Heitkemper-** do they walk to each range or do you all take them with your...

**Mr. Brooks-** no sir, everyone is on foot.

**Mr. Heitkemper-** and they supposedly have a trail to stay away from the property lines, I hope.



**Mr. Brooks-** yes sir, all of the trails are marked with directional signs on which way to go and they go from target to target, either shooting 20-25 targets per range in that mile loop.

**Mr. Heitkemper-** but as far as that goes, the property line, there's no marking really there.

**Mr. Brooks-** in this case where the pictures were taken, like I said, I'm not sure where that boundary is, I was not aware that Mr. Reilly's property came up into the woods as far as it did, if that's the case. Already reached out to Dave Ruckman who did the survey and he's going to come back out and re-establish that line for me.

**Mr. White-** asked if any other questions from the Board to Mr. Brooks.

Someone from the audience stood up and said they had a question.

**Mr. White-** ma'am, we've already closed the public comment section, sorry. Explained to the audience that we have other items on the agenda and we have expanded the time to let everyone be heard. We have heard from those four that are against and we just have to keep moving with this. Asked if anything else from the Board.

**Mr. Unruh-** read the ballot: Docket FC-10-24-44, Petitioner is The Sporting Club as the Farm. Findings of Fact: 1. Appeal of Decision issued by: Plan Director, Nick Creevy. 2. Date of Appealed Decision: 9 September 2024. 3. Appeal WAS timely filed within thirty (30) days of the Appealed Decision. 4. Evidence reviewed: Special Exception Ballot from 10 June 2019, 10 March 2020 and 15 September 2021. Photos dated August 18 from Mr. Paul Reilly / Indiana Code, Staff Recommendations. 5. The evidence DOES support the Appealed Decision. The Board of Zoning Appeals hereby DENIES the Petitioner's Administrative Appeal at the meeting held on the 13<sup>th</sup> day of January 2025.

**Motion:** Appeal Denied

**Moved by:** Victor Unruh

**Seconded by:** Guy Heitkemper

**Motion passed.**

**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. Creevy-** read staff report. This item was tabled at the last meeting for additional information. Don presented the Staff Report at the last meeting. They did provide a letter addressing the items of concern. The representative are here and can go into that further, looks like they are the only folks here so perhaps the concerns of the public are not great as previously thought. Floodplains are reviewed during permitting, for compliance. This appears to be in a fringe area which would require a local floodplain permit and any building would be flood proofed or located above the base flood elevation. Applicant did move the structure closer to the existing barn, enclosed it in the fence, agreed to put screening in the fence, black vinyl in the 7' chain length fence. The made adjustments based off the concerns.

**Mr. White-** since he was absent at the previous meeting, asked Kristi if they got through the presentation at the last meeting and just tabled the vote

**Ms. Fox-** thinks we did. We got to the end and there were questions from the Board and it was tabled to give them time to answer those questions.

**Mr. White-** so we don't have to go through the whole process

**Ms. Fox-** recommends going through the process since they did make some revisions.

**Scott Siple-** 6809 Corporate Drive, Indianapolis, Indiana. Midwestern Engineering. Representing applicant, Aqua Indiana. As stated in the December meeting, this property is a non-conforming use and has been non-conforming since the induction of the zoning ordinance. The questions asked were about staffing levels, location of the building itself, the elevation. It's not meant to be a permanently use building, location for staff to use when in area, store supplies. The new version is about 10 feet from the existing building, elevation is being worked on and will address with permitting.

**Mr. Unruh-** the forty foot shown on this is now what?

**Mr. Siple-** showed Mr. Unruh on the new map.

**Mr. Unruh-** I had the old drawing

**Mr. Whalen-** any additional parking?

**Mr. Siple-** the intent is to use what's there

**Mr. Unruh-** asked about the floorplan of the building

**Mr. Siple-** the building will be a modular building, that is a stock drawing but there will be modifications and that will be an office, not a bedroom.

**Mr. Unruh-** asked what the exterior material is

**Mr. Siple-** will conform to the zoning ordinance for the residential area. The intent is to blend with the neighborhood as much as possible and use vegetated screening and fencing.

**Jim Shields-** 5750 Castle Creek Drive, Indianapolis, IN 46250. Engineer with Aqua Indiana. The facility has been there since the early 1970's. Throughout the years, they have leased multiple locations around Floyd County. They just need a home base.

**Mr. Unruh-** asked if they fence with slats would be sufficient for screening and exterior materials.

**Mr. Creevy-** yes, it meets the requirements and they have committed to planting more trees. The plan they have submitted will enhance the location. Should reference their letter date January 8, 2025 in the ballot. No restrictions on building material for residential areas. Unless otherwise stated, this would follow the residential zone.

**Ms. Fox-** so unless they put a condition that this would follow commercial standards for exterior materials, it will follow residential.

**Mr. Unruh-** which would be?

**Mr. Creevy-** 20% maximum vinyl, different kinds of finishing materials

**Mr. Unruh-** has a problem with vinyl siding. Maybe wood or hardy board. Will be visible over the fence.

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

**Mr. Unruh-** read the ballot. Docket FC-11-24-46, Petitioner Aqua Indiana. After careful review the Board finds that: The special exception WILL NOT be injurious to the public health, safety, morals, and general welfare of the community because: 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 because: the proposed 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 because: 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 because: 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 because: The approval will support the operation of a utility providing infrastructure to the community. The Board of Zoning Appeals hereby GRANTS the Petitioner's Special Exception at the meeting held on the 13<sup>th</sup> day of January, 2025. Approval by the Board is subject to the completion of the following conditions: The exterior of the proposed structure shall be aesthetically appropriate for a residential neighborhood (i.e. Wymberly Woods Subdivision). Letter date 1-8-2025.

**Motion:** Approve with Conditions

**Moved by:** Victor Unruh

**Seconded by:** Guy Heitkemper

**Motion passed.**

**Agenda Item 3 – 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 4 – 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 5 – FC-11-24-51: Development Standards Variance** – Applicant is requesting a variance to allow 70 percent lot coverage in an 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 6 – 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.

**Mr. Creevy-** Items 3-6 were tabled from last meeting. They are Development Standards Variances related to the Special Exception request by Jake Elder with The Elder Company. The Special Exception was denied and there was some lack of clarity on what to do with remaining Development Standards Variances and if they should be withdrawn or tabled. He did speak with Mr. Elder prior to his submittal of those applications and warned him that if the Special Exception was not approved then the Development Standard Variances would not be able to be approved. He understood the risks and chose to apply anyway. At this time, believes the appropriate thing is to dismiss those items rather than table indefinitely.

**Ms. Fox-** just for clarification, originally at that meeting he said he was interested in withdrawing them and then was interested in seeing if he could table them to avoid having to pay the costs again. At the end of the meeting, he then asked to table it to tonight, correct?

**Mr. Creevy-** correct.

**Mr. Unruh-** so does he get a refund on his fee?

**Ms. Fox-** so we're tabled to tonight and that brings up her next point which is, under our rules, under Article 9.1- dismissal of cases by the Board, which I think where Nick is going but wanted to make sure we have a clear record if that's the direction the Board takes, that if no person appears on behalf of the petition, which Mr. Elder is not here this evening, then the petition can be continued until the next regular meeting or dismissed at the discretion of the Board. Then there's a B section where there is no action for 90 days, unless good cause is shown, you can dismiss as well. If dismissed or withdrawn, he will have to repay, he'd have to re-bring all of things again.

**Mr. Unruh-** so he doesn't get a refund?

**Mr. Creevy-** no.

**Ms. Fox-** no, I mean, it sounds like Nick had that conversation with him and maybe even discussed just bring the first agenda item, a Special Exception, before bringing the Development Standards Variances and he chose to submit them all at one time.

**Mr. Unruh-** so we just need a motion to dismiss, not a ballot, correct?

**Ms. Fox-** you can table till next month or you can dismiss. At this point, he has not shown and it was tabled from last month to this month.

**Mr. Whalen-** have you had any conversations since?

**Mr. Creevy-** I have not heard from Mr. Elder on this.

**Mr. Bibelhauser-** thinks he should be contacted in case he has another plan, hates to see him loose that money.

**Mr. Unruh-** it's a lot of money.

**Ms. Fox-** the issue is, his Special Exception was denied. He now has to wait a year before bringing that back to the Board again.

**Mr. Unruh-** so these are useless, right?

**Mr. Creevy-** right. The applications for the variances are for a use that is not allowed.

**Ms. Fox-** he submitted the other four requests based on that use being approved.

**Mr. Heitkemper-** so if he had another special, or something else that wasn't allowed and he wanted to come before us, he can't for year or just for this particular item.

**Ms. Fox-** it would have to be substantially changed

**Mr. Creevy-** he would have to bring in a separate Special Exception. He would still have to submit new applications because the site plans and everything would be different. Staff put in a lot work reviewing these and putting together Staff Reports and to do it all again, he should pay again.

**Mr. Unruh-** so he can't find another piece of property and use these on that property. He has to use it on this property and the earliest he can do that is one year.

**Mr. Creevy-** right.

**Mr. Whalen-** because all the variances are tied directly to the approval

**Ms. Fox-** even if he asks for a different Special Exception on that property, a different use, these would not support it. These were in support of that use he was requesting at that time.

**Mr. Whalen-** makes motion to dismiss FC-11-24-49, FC-11-24-50, FC-11-24-51, and FC-11-24-52

**Motion:** Dismiss Agenda items 3-6

**Moved by:** Scott Whalen

**Seconded by:** Victor Unruh

**Motion passed.**

## **NEW BUSINESS**

**Agenda Item 7 – FC-12-24-53: Development Standards Variance** – Applicant is requesting to build an addition onto the existing home that will be within the ridgeline non-disturbance zone. Brent Sprigler. 2580 Old Vincennes Road, New Albany, IN 47150 (22-05-03-200-023.000-007). Section 32, Township 2 South, Range 6 East.

**Mr. Creevy-** requests to table this item. The applicant is going to provide additional information and update the site plan. There was ambiguity regarding the property line and that needs to be clarified. Staff requests to table until the regular February BZA meeting.

**Mr. Whalen-** makes motion to table FC-12-24-53 until the February meeting

**Motion:** Table until February  
**Moved by:** Scott Whalen  
**Seconded by:** Guy Heitkemper  
**Motion passed.**

**Motion: Adjourn**  
**Moved by:** Guy Heitkemper  
**Seconded by:** Scott Whalen  
**Motion passed.**

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

Bill White  
Chairperson

[Signature]  
Attest