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**BOARD OF ZONING APPEALS
Virtual Meeting via ZOOM - Minutes
September 2, 2020 - 5:30 p.m.**

CALL TO ORDER

ROLL CALL

INTRODUCTION OF EVIDENCE

APPROVAL OF AGENDA

APPROVAL OF MINUTES:

May, 6, 2020

June 3, 2020

July 1, 2020

CALL TO ORDER: Mary Beth Kaczmarczyk called the meeting to order at 5:30 PM.

ROLL CALL: Vicky Sorensen, Mary Beth Kaczmarczyk, Bernie Guerrettaz, William Hosea, Margaret Clements

ABSENT: None

STAFF PRESENT: Larry Wilson, Director, Jackie Nester Jelen, Assistant Director, Anne Crecelius, Planner/GIS Specialist, Rebecca Payne, Planner/GIS Specialist, Tammy Behrman, Senior Planner, Drew Myers, Planner/GIS Specialist

OTHERS PRESENT: David Schilling, Legal

INTRODUCTION OF EVIDENCE:

Larry Wilson introduced the following items into evidence:

Monroe County Comprehensive Land Use Plan (as adopted and amended)

Monroe County Zoning Ordinance (as adopted and amended)

Monroe County Subdivision Control Ordinance (as adopted and amended)

Board of Zoning Appeals Rules of Procedure (as adopted and amended)

Cases advertised and scheduled for hearing on tonight's agenda

The motion to approve the introduction of evidence carried unanimously.

APPROVAL OF AGENDA:

Motion to approve the agenda, carried unanimously

APPROVAL OF MINUTES:

Motion to approve the minutes from May 6, 2020, June 3, 2020 & July 1, 2020 meetings, carried unanimously.

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ADMINISTRATIVE BUSINESS: None.

OLD BUSINESS: None.

NEW BUSINESS:

- 1. 2006-VAR-34** **Pierce Environmental Constraints Overlay Area 1; 12% Slope**
One (1) 6.56 +/- acre parcel in Clear Creek Township, Section 28 at 9629 S Strain Ridge RD. **Zoned AG/RR.**
- 2. 2007-VAR-43** **Hardiman ECO Area 1 Variance from Chapter 825**
- 3. 2007-VAR-44** **Hardiman Buildable Area from Chapter 804**
One (1) 0.49 +/- acre parcel in Salt Creek Township, Section 33 at 7376 E Windfree LN. **Zoned SR.**
- 4. 2007-CDU-02** **Zimmer Auto Repair Services Conditional Use Variance**
- 5. 2007-VAR-45** **Zimmer Minimum Lot Width Variance from Chapter 804**
- 6. 2007-VAR-46** **Zimmer Side Yard Setback Variance from Chapter 804**
One (1) 5.67 +/- acres parcel in Richland Township, Section 26 at 2444 N Hartstrait RD. **Zoned AG/RR.**
- 7. 2007-VAR-47** **Brian Hall Rear Yard Setback from Chapter 833**
One (1) 0.47 +/- acre parcel in Perry Township, Section 20 at 4003 S. Rogers ST. **Zoned RE1.**
*****WITHDRAWN BY STAFF*****
- 8. 2008-VAR-48** **Sparks Minimum Lot Width Variance from Chapter 804**
One (1) 10 +/- acre parcel in Perry Township, Section 27 at 2402 E Schacht RD. **Zoned AG/RR.**
- 9. 2008-CDU-03** **Beaumont House Historic Adaptive Reuse Conditional Use, Chptr 813**
- 10. 2008-VAR-49** **Beaumont House Parking Lot Surfacing Variance from Chapter 806**
One (1) 3.40 +/- acre parcel in Richland Township, Section 32 at 9030 W State Road 48. **Zoned AG/RR/HP Overlay.**
- 11. 2008-CDU-04** **Doggoasis Conditional Use, Chapter 804**
One (1) 14.33 +/- acre parcel in Richland Township, Section 6 at 9606 W Reeves RD. **Zoned AG/RR.**
- 12. 2008-VAR-50** **Feuquay Front Yard Setback Variance to Chapter 804**
One (1) 0.36 +/- acre parcel in Bloomington Township, Section 15 at 4001 N Rural ST. **Zoned RS3.5.**
- 13. 2008-VAR-51** **Hughes on Fairfax ECO Area 1 Variance to Chapter 825**
- 14. 2008-VAR-52** **Hughes on Fairfax Buildable Area Variance to Chapter 804**
One (1) 16.63 +/- acre parcel in Clear Creek Township, Section 14 at 8482 S Fairfax RD. **Zoned AG/RR.**

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REPORTS:

- 1. Planning:** Larry Wilson
- 2. County Attorney:** David Schilling

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NEW BUSINESS

- 1. 2006-VAR-34 Pierce Environmental Constraints Overlay Area 1; 12% Slope**
One (1) 6.56 +/- acre parcel in Clear Creek Township, Section 28 at 9629
S Strain Ridge RD. **Zoned AG/RR.**

BOARD ACTION: Kaczmarczyk introduced the petition.

STAFF ACTION:

Payne: Hi everyone. This petition is called the Pierce Environmental Constraints Overlay Area 1; 12 percent slope and the location is in Clear Creek Township at 9629 South Strain Ridge Road. It is 1 parcel with 6.56 plus or minus acres.

Nester Jelen: Rebecca, I think there might have been an issue combining the documents, so I am going to pull up the BZA report for your slides. I apologize on that. Just one second.

Payne: You are muted Jackie.

Nester Jelen: Is this the first slide you want me to show?

Payne: None of my slides are in there?

Nester Jelen: I don't think so.

Payne: Would it make sense if I sent them real fast or do we want to just proceed?

Nester Jelen: Let's just proceed. In the background I will try and see if I see anything.

Payne: Let me start by summarizing this petition and giving you background. Hopefully you have all been able to read your packets and can follow along with me even though my slides aren't necessarily going to relate to what you see on the screen. This is a request for a design standards variance from Chapter 825 as it relates to the ECO Area 1 and the purpose of this request is because the petitioner is wanting to build a house on this lot and it would involve constructing a gravel driveway across a portion of slopes that are greater than 12 percent. That is why he is here asking for the variance and the driveway would serve a single family dwelling unit on the lot. The petitioner was informed that a variance may be necessary when he had his property surveyed, so that is kind of how this came to the Planning Department and when we reviewed the petitioner's site plan it did in fact reveal that the site is located in the ECO Area 1 near Lake Monroe. ECO Area 1 mandates that there shall be no disturbance of natural vegetation and construction beyond the 12 percent slope. To summarize the proposed gravel driveway is the thing that is violating the slope. His proposed home is not violating slope but to get to his proposed home the driveway would run about the length of 120 feet across slopes of 13 percent. Jackie do you want to flip to the location show everyone can have a quick look? Here is the location. The address is actually 9629 South Stillwater Lane but you access it from East Monroe Dam. It is currently zoned Agricultural/Rural Reserve with the Environmental Constraints Overlay Area 1 as well. Site conditions you can see ...

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Behrman: I am going to interrupt. I did find within the existing PowerPoint presentation this one. It starts at slide 32-33. If you want to pull that up it might help to make things go a little smoother. I am glad I saw it embedded in the existing PowerPoint, just kind of in the wrong spot.

Payne: Alright, we will get back on track here. Here, I was trying to talk about slope a little bit. You can see the lot has quite a bit of slope. There is some portion of the lot that doesn't have slope toward the west side of the parcel. Here I just want to spend a second looking at the site photos. This is the lot. You can see where the petitioner has the proposed home staked out. I am actually standing on the eastern side of the lot toward the lake looking west at the location of the house. Again, this is another photo just looking at the existing shed on the property. Now I switched orientations and now I am looking west towards the lake in both of these photos. Here are 2 shots that sort of show the parcel with woods that would separate the house from the lake. Again, we are looking due east toward the lake and you can see where the stakes are for the proposed home. Here is the site plan. Can you blow this up a little bit? Thank you. So, you can see that towards, farther east on the lot is one house, which is the desired location of house and again it is not sitting in slopes greater than 12 percent. But it is this green driveway where you see that a portion of that, that totals about 300 feet and a portion of that, 120 feet or so, closes slope at 13 percent. In this slide you can also see that there is a second house proposed and this is a location where the petitioner could build and the slope would not an issue for either the house or the driveway. This is the letter the petitioner submitted. Hopefully you have had a chance to read that. This is the plat map. I couldn't get it any crisper but this is Lot 4 in the subdivision. Moving on to the recommended motion. We recommend denying the design standards variance to Chapter 825-4 (C) (1) based on findings of fact, primarily Finding C, which states the approval including any conditions or commitments deemed appropriate, is the minimum variance necessary to eliminate practical difficulties in the use of the property, which would otherwise result from a strict application of the terms of the Zoning Ordinance. In our findings we found that the petitioner locate their house in an area within 12 percent slope and thereby eliminate the driveway where slope is impacted. Staff does not find the practical difficulty in the use of the property in this situation in this configuration and its existing slopes does not create a hardship for the petitioner. If they were to relocate the proposed house and driveway in a location on the property where the slope is not impacted.

RECOMMENDED MOTIONS:

Deny the Design Standards Variance to Chapter 825-4(C) (1) based on the findings of fact, primarily Finding (C).

FINDINGS OF FACT:

812-6. Standards for Design Standards Variance Approval: In order to approve an application for a design standards variance, the Board must find that:

- (A) **The approval, including any conditions or commitments deemed appropriate, will not be injurious to the public health, safety, and general welfare of the community, because:**

(1) It would not impair the stability of a natural or scenic area;

Findings:

- Approval of the variance would allow the petitioner to construct a driveway over slopes greater than 12% in Area 1 of the Environmental Constraints Overlay;
- Approval of the variance would allow the petitioner to remove vegetation during the construction of the driveway;
- The site gains access via S Stillwater LN, a paved road;
- The site served by the proposed driveway is currently vacant and has at least one (1) acre of compact buildable area;
- The site has no FEMA floodplain;
- The proposed new driveway will be gravel and measure a total distance of approximately 300 feet;
- Of the total 300' driveway length, approximately 120 feet will cross 13% slope;
- The petitioner has shown two proposed locations for a home on this property. There is a location that meets the 12% slope requirement, however the petitioner prefers another location that requires the driveway to go through restricted areas above 12% slope;
- Conclusion: It would not impair the stability of a natural or scenic area;

(2) It would not interfere with or make more dangerous, difficult, or costly, the use, installation, or maintenance of existing or planned transportation and utility facilities;

Findings:

- See Findings under Section A(1);
- The site gains access via S Stillwater LN, a paved road;
- S Stillwater LN is designated as a local road;
- The site will maintain a septic system;
- The request does not impact transportation or utility facilities;
- Conclusion: It would not interfere with or make more dangerous, difficult, or costly, the use, installation, or maintenance of existing or planned transportation and utility facilities;

(3) The character of the property included in the variance would not be altered in a manner that substantially departs from the characteristics sought to be achieved and maintained within the relevant zoning district. That is, the approval, singularly or in concert with other approvals - sought or granted, would not result in a development profile (height, bulk, density, and area) associated with a more intense zoning district and, thus, effectively rezone the property; and,

Findings:

- See Findings under Section A(1);
- The site is zoned Agricultural/Rural Reserve (AG/RR) and Environmental Constraints Overlay Area 1 (ECO1);
- The character of the Agriculture/Rural Reserve (AG/RR) District is defined as that which is primarily intended for agriculture uses including, but not limited to, row crop or livestock production, forages, pasture, forestry, single family residential uses associated with agriculture uses and limited, very low density, rural non-farm related single family uses and not in (major) subdivisions. Its purposes are to encourage the continuation of

agriculture uses, along with the associated single family residential uses, to discourage the development of residential subdivisions and non-farm-related nonresidential uses, to protect the environmentally sensitive areas, such as floodplain and steep slopes, and to maintain the character of the surrounding neighborhood. Therefore, the number of uses permitted in the AG/RR District is limited. Some uses are conditionally permitted. The conditions placed on these uses are to insure their compatibility with the agriculture-related uses. The development of new non-farm residential activities proximate to known mineral resource deposits or extraction operations may be buffered by increased setback distance;

- Surrounding properties are zoned Agricultural/Rural Reserve (AR/RR) and Suburban Residential (SR);
- Conclusion: The character of the property included in the variance would not be altered in a manner that substantially departs from the characteristics sought to be achieved and maintained within the relevant zoning district;

(4) It would adequately address any other significant public health, safety, and welfare concerns raised during the hearing on the requested variance;

Findings:

- The Board of Zoning Appeals may request the petitioner to address any other significant public health, safety, and welfare concerns raised during the hearing;

(B) The approval, including any conditions or commitments deemed appropriate, would not affect the use and value of the area adjacent to the property included in the variance in a substantially adverse manner, because:

(1) The specific purposes of the design standard sought to be varied would be satisfied;

Findings:

- See Findings under Section A;
- The proposed gravel driveway would meet all other applicable requirements;
- The petitioner stated that the driveway is located to minimize it's distance over the 13% slope;
- Total gravel driveway length is approximately 300';
- Approximately 120' of the total 300' long driveway will cross slope;
- Conclusion: The specific purposes of the design standard sought to be varied would be satisfied;

(2) It would not promote conditions (on-site or off-site) detrimental to the use and enjoyment of other properties in the area (e.g., the ponding of water, the interference with a sewage disposal system, easement, storm water facility, or natural watercourse, etc.); and,

Findings:

- See Findings under Section A and B(1);
- Conclusion: It would not promote conditions detrimental to the use and enjoyment of

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other properties in the area;

(3) It would adequately address any other significant property use and value concerns raised during the hearing on the requested variance; and,

Findings:

- Property value tends to be subjective as it is difficult to anticipate adverse effects;
- The Board of Zoning Appeals may request the petitioner to address any other significant property use and value concerns raised during the hearing on the requested variance;

(C) The approval, including any conditions or commitments deemed appropriate, is the minimum variance necessary to eliminate practical difficulties in the use of the property, which would otherwise result from a strict application of the terms of the Zoning Ordinance.

Findings:

- Staff has determined that the petitioner could locate their house in an area within 12% slope and thereby eliminate the need to build a driveway that impacts slope restrictions;
- Staff does not find the “practical difficulty” in the use of the property. The configuration of the lot and existing slopes does not create a hardship for the petitioner if they were to relocate the proposed house and driveway in a location on the property where slope is not impacted.

The Board shall have the authority to impose specific conditions as part of its approval in order to protect the public health, and for reasons of safety, comfort and convenience. Variance approval applies to the subject property and may be transferred with ownership of the subject property subject to the provisions and conditions prescribed by or made pursuant to the Zoning Ordinance.

The Board must establish favorable finding for all three criteria in order to legally approve a design standards variance.

QUESTIONS FOR STAFF – 2006-VAR-34 – Pierce

Kaczmarczyk: I am sorry, I thought you were done.

Payne: I am. It's time for questions. Does anyone have any questions?

Kaczmarczyk: Does anyone have any questions for staff?

Wilson: Rebecca, this is Larry. The picture you showed with the house with the stakes for the house.

Payne: Yes?

Wilson: That is the location that actually meets the slope requirement, is that correct?

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Payne: No, that is the desired home.

Wilson: Ok, so there is no trees.

Payne: That is the location of that house that would cause the driveway to violate the slopes.

Wilson: Ok. Does the driveway goes through any area that has trees in it?

Payne: No.

Wilson: Ok.

Kaczmarczyk: Does the area that you deemed appropriate for the house have trees in it that would have to be cleared?

Payne: No.

Kaczmarczyk: Ok. Any other questions for staff? None. Is the petitioner here?

PETITIONER/PETITIONER'S REPRESENTATIVE – 2006-VAR-34 – Pierce

Pierce: Yes, this is Jason Pierce.

Kaczmarczyk: Would you like to speak sir, I assume?

Pierce: Yes, please. First I would like to thank the Board for their consideration for the variance.

Kaczmarczyk: Ok, sir thank you. Can you raise your right hand swear to tell the truth and nothing but the truth?

Pierce: Yes, I do.

Kaczmarczyk: Thank you sir. You can continue.

Pierce: Ok, thank you. I would like to thank the Board for consideration for the variance. Start off by that and then I would also like to thank Rebecca for helping me through the process. There are 2 points that I would like raise in my ask for the Board's approval on the variance. The first is the use of the property. When me and my family started looking for property in Bloomington, we wanted to move back and we wanted to let me daughter experience some of the things that I had growing up on a farm. We wanted to have some goats, a vegetable garden, a flower garden and some bee hives to kind of know where food comes from and all of those experiences that I had. When we were looking at lots we looked at 10 acres on Valley Mission that were much less expensive. It was all wooded and whether it would be acceptable for tree removal or not, it is not something that I wanted to do to make room for those activities. So we passed on that. We looked at a couple smaller lots but the same problems as far as land use. Our goals of wanting to do those things, it really made those lots less desirable. That is the reason why we kind of landed on this 6

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and half acres was the open area the open area to have those activities because it is something that is important to me and my family as we move back from the Louisville area much more of an urban area. That is the first piece I guess I would as far as the difficulty that we are experiencing. The piece is and I think Rebecca mentioned it, as I have gone through this process and it is my desire not to impact the environment in any negative way that is the reason why we have tried to follow all of the processes that are in place. But as we have gone through that I have reached out to a couple of local professionals. I have talked to Jeff at Bynum Fanyo, Chelsea at Abram-Moss and both professionals right because I just have my own common person opinion about a gravel drive and the 13 percent slope, both professionals felt that a gravel drive on a 13 percent slope would not be an issue. In addition we would be hiring one of the 2 agencies to place the best practices for the watershed and erosion in conjunction with that gravel driveway because we do not want impact the environment in any kind of negative way. In conclusion I would just say I would ask the Board to consider why we bought the property in the first place as far as those land uses that we wanted to have and the consideration that we had from the beginning of getting property that was already set up to where we could do those things. I would ask the Board to consider not my opinion but the professional's opinion on the gravel drive on that 13 percent slope. I would ask the Board to consider that we are willing to do whatever is needed from a best practices standpoint with one of the local engineering firms to make sure that meets or exceeds the standard and the last piece that I would ask the Board to consider is at least in my mind as I have worked through it at a logical standpoint of if there is not any injury to the watershed and environment and to erosion and all those pieces my hope is that you will find a favorable decision for my variance request. That is all that I have and I appreciate the time. If you have any questions I would be able to answer them.

Kaczmarczyk: Thank you sir. Does anyone have any questions for the petitioner?

Guerrettaz: I have one. Mr. Pierce?

Pierce: Yes sir.

Guerrettaz: Can I go Madam Chairwoman, Mary Beth?

Kaczmarczyk: Yes.

Guerrettaz: Would you explain again what your proposed use is, you lifestyle use that you and your family are proposing for the property? Could you explain that again just briefly for me again, please?

Pierce: Yes, sir. We are planning to have 4 goats but somewhere of 3 to 5 goats. I want my daughter to be able to experience some of things that I did as far as having baby goats, seeing how livestock will work, understanding as you go through life regardless of what she chooses that when you get a chicken sandwich or a hamburger that that actually comes from a living animal and have those I guess interactions if you will. We also want to have our vegetable garden and our flower garden to raise some of our foods. Also the same thing I would like for her to understand whether it is potatoes or green beans or what have you, those come from a process and from the land and not just you show up to the grocery store and they are there. We are going to have a couple of bee

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hives. Long-term and I didn't put it in the request but it is more of one of those long-term items, I would like to put in a small orchard. It is something that I experienced growing up and it is something that I very much enjoyed. I hope that answers the question.

Guerrettaz: Yes, so, where do you anticipate the location where you might put some of those activities? Are those going to be up between the house and the roadway?

Pierce: The gardens, I would think for sure would be up in that area. The goats I would say somewhere between the roadway and the house. I would not necessarily want the goats right up against Stillwater Lane. I could see the flower garden being up there first. I could see the vegetable garden coming in behind that and then having space for the goats to graze because they are somewhat, you know if there is not a food source just like any animal they have a tendency to roam more than they should. Also to have our house without having the goats right on top of the house.

Guerrettaz: Again, the home site that is marked proposed house is not where you are proposing it. You are proposing it to the southeast of where that proposed, yeah, that is what I thought. Ok, that is all that I have got. Thank you.

Pierce: Thank you.

Kaczmarczyk: Any further questions for the petitioner?

Sorensen: I have one. This is Vicky. In your explanation about all the things you wanted to do is that the reason you decided to move the house further back on the property or was there another reason that you made that decision?

Pierce: Yes. There were a couple of reasons. One, the farther away from the roadway just from a personal perspective I would prefer. But more so than that like I mentioned I don't necessarily want even though we want to be able to experience the goats and experience that cycle, I don't want them necessarily in the front yard or the back yard. If that makes sense and that is really the reason for the location is the roadway and then the land usage. Outside of that I know I have talked to a couple of people and one thing that would be brought up was the lake and regardless of either one of the sites there is not really much in terms of a lake view at all. That is kind of where I stand on it.

Sorensen: Thank you.

Kaczmarczyk: I have a question. So you are proposing to put the goats up there about where they have the house. Is that correct?

Pierce: Yes. It is somewhere in that area. You know Mary Beth, I know what I want to do and I want it to be something that the primary purpose is for Lila, my daughter, to be able to experience those things but I also want to make sure that I am cognizant of my neighbors and want to keep it where it is I guess pleasing to the eye for them. I don't want anybody to be concerned because there are goats running along Stillwater. So, I want to be able to have them back a little bit away from Stillwater because we have been away from Bloomington for a long time. I love Bloomington. We

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look forward to being back here and I want to do all the right things just like with this process, I want to make sure we do the right thing and do it the right way. The goats will be like that.

Kaczmarczyk: Ok. Any other questions for the petitioner? Ok, no other questions. Would anybody else like to speak on behalf of the petition? Thank you Jason. Ok. I am not seeing anyone else to speak on behalf. Would anybody like to speak against this petition? Ok. I see none. I will entertain a motion now.

SUPPORTERS – 2006-VAR-34 – Pierce: None

FURTHER SUPPORTERS – 2006-VAR-34 – Pierce: None

REMONSTRATORS - 2006-VAR-34 – Pierce: None

ADDITIONAL QUESTIONS FOR STAFF – 2006-VAR-34 – Pierce: None

FURTHER QUESTIONS FOR STAFF – 2006-VAR-34 – Pierce

Guerrettaz: I can do that. I just want to add that I think that the way that Mr. Pierce's family has looked at this property exactly kind of how we want people to look at properties. I understand staff's recommendation but I think that the placement of his home and the placement of the activities that he wants to do on the property is very reasonable and responsible. I think practical difficulties have been met because of that. I commend him on speaking to a couple of trained professionals and not just one that would possibly give him the answer that he wants but seeking the advice of 2 which shows that he is preparing this with due diligence in trying to come up with the best solution. **In the matter of case number 2006-VAR-34, this is a request for a design standards variance from Chapter 825-4 (C) (1) at 9629 South Strain Ridge Road, 9625 South Stillwater Lane, I move that we approve the variance, based on findings in the staff report with conditions of the Highway Department included in that and I would also like to add that;**

- 1) As a part of the Improvement Location Permit that the Pierce's contract a licenses professional to prepare a Best Management Practices Erosion Control Plan that will be reviewed and approved by our MS4 Operator.**

Kaczmarczyk: I **second** that motion.

Nester Jelen: Larry, I noticed that you are on now. Do you me to call the roll or would you like to call the roll?

Wilson: This is vote on petition number 2006-VAR-34, a development standards variance from the Environmental Constraints Overlay for Pierce for a property located at 9629 South Strain Ridge Road. The motion is to approve the variance based upon the amended findings, which find that practical difficulties do exist for utilizing the property, with the development conditions in the staff report and with the additional condition that upon applying for an Improvement Location Permit with an Erosion Control Management Plan be submitted utilizing best management practices and that such plan be approved by the MS4 Operator. Does that cover it ok everybody?

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Guerrettaz: Perfect.

Wilson: Again, a vote in favor is a vote to approve the variance with amended findings. Margaret is not here tonight?

Kaczmarczyk: No.

Guerrettaz: She logged on.

Nester Jelen: Margaret did log on.

Clements: I have logged in but I logged in late and did not hear the case.

Wilson: Ok, I will show you as abstaining on this Margaret. Bernie Guerrettaz?

Guerrettaz: Yes.

Wilson: William Hosea?

Hosea: I vote yes.

Wilson: Mary Beth Kaczmarczyk?

Kaczmarczyk: Yes.

Wilson: Vicky Sorensen?

Sorensen: Yes.

Wilson: The variance is approved by a 4 to 0 vote.

The motion in case 2006-VAR-34, Pierce Environmental Constraints Overlay Area 1; 12% Slope, to approve the variance with the condition and amended findings as stated in the motion, carried unanimously (4-0).

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NEW BUSINESS

2. 2007-VAR-43 Hardiman ECO Area 1 Variance from Chapter 825

3. 2007-VAR-44 Hardiman Buildable Area from Chapter 804

One (1) 0.49 +/- acre parcel in Salt Creek Township, Section 33 at 7376 E Windfree LN. **Zoned SR.**

BOARD ACTION: Kaczmarczyk introduced the petition.

STAFF ACTION:

Creceilius: Thank you Mary Beth. This case is for the 2 design standards for the petitioner Hardiman. This is a design standards variance from the Chapter 804 Buildable Area, the 15 percent slope restriction and also from Chapter 825 the ECO Area 1, 12 percent land disturbance restriction. The property is located in Salt Creek Township in Section 33 at 7376 East Windfree Lane. It is platted within the Windfree Estates Subdivision. Its current zoning is Suburban Residential with the ECO Area 1 Overlay. The Comprehensive Plan identifies this area as Farm and Forest. The petitioners are requesting the 2 design standards variances in order to build an addition to their existing single family residence in an area that exceeds 12 percent and 15 percent slopes. The petition site, the lot and structures are pre-existing nonconforming rendering them grandfathered until a change is requested. The existing single family residence is 930' square feet, built in 1987. There is a detached garage that is approximately 1,100' square feet built in 2002. These 2 variances are the minimum requirement in order to build an additional structure or an addition on the home. The addition would be 240' square feet to the southwestern side of the home. On the left image the garage is closest to the road and the single family residence is toward the back down the hill. It would be an addition to the home that is 144' square feet and a small addition to the existing rear deck. It is on the side of the home that we can't quite see here. The bottom right photo is their site plan also Exhibit 2. The existing deck does get extended out there a little bit in the yellow. They would do a small change to the roof line on the porch. They would not be pouring a foundation for the addition, it would be an overhang. 940' square feet. It is pretty small. The bottom right photo is the area that would have the addition. Based on the site visit I did a couple of weeks ago this really seems like the most appropriate area for an addition to be added to the home. The petitioner did supply multiple photos in her petitioner letter, Exhibit 1, where she shows the style of overhang that can be seen throughout the Windfree Estates Subdivision. To reiterate it is the 804, 15 percent, for any structure that is in an area that is 15 percent slope or greater and then because of the ECO Area 1 there is the 12 percent any land disturbance, structure or land disturbance at 12 percent slope. Staff is recommending approval to both based on practical difficulties, specifically (C) the home is pre-existing. It was platted before the zoning ordinance and this would be an ideal area to add an addition. The majority of the petition site is sloped and over 12 percent. Does anybody have any questions?

RECOMMENDED MOTION:

Approve the design standard variance from the Buildable Area (15% slope) requirement of Chapter 804 of the Monroe County Zoning Ordinance based on the findings of fact, specifically 3 (C), regarding Practical Difficulties.

Approve the design standard variance from the ECO Area 1 (12% slope) land disturbance restriction of Chapter 825 of the Monroe County Zoning Ordinance based on the findings of fact,

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specifically 3 (C), regarding Practical Difficulties.

FINDINGS OF FACT: Buildable Area (15%) from Chapter 804

812-6. Standards for Design Standards Variance Approval: In order to approve an application for a design standards variance, the Board must find that:

- (A) **The approval, including any conditions or commitments deemed appropriate, will not be injurious to the public health, safety, and general welfare of the community, because:**

(1) It would not impair the stability of a natural or scenic area;

Findings:

- Approval of the variance would allow the petitioner to add a 240 sq. ft. addition to an existing home and a 144 sq. ft. addition to the existing deck on a 0.49+/-acre;
- The site currently holds a 930 sq. ft. single family residence built in 1987, and a 1,104 s. ft. detached garage built in 2002;
- The lot and surrounding area is zoned Suburban Residential (SR) and ECO Area 1;
- The site is platted within the Windfree Estates Subdivision;
- There are no designated scenic areas adjacent to the petition site;
- There is no evidence that the addition would obstruct a natural or scenic view;
- Conclusion: It would **not impair** the stability of a natural or scenic area.

(2) It would not interfere with or make more dangerous, difficult, or costly, the use, installation, or maintenance of existing or planned transportation and utility facilities;

Findings:

- See findings under A (1);
- The property has access from W Windfree Lane, a designated local road;
- The proposed construction will not interfere with water lines or the septic system;
- Conclusion: It would **not interfere** with or make more dangerous, difficult, or costly, the use, installation, or maintenance of existing or planned transportation and utility facilities.

(3) The character of the property included in the variance would not be altered in a manner that substantially departs from the characteristics sought to be achieved and maintained within the relevant zoning district. That is, the approval, singularly or in concert with other approvals - sought or granted, would not result in a development profile (height, bulk, density, and area) associated with a more intense zoning district and, thus, effectively re-zone the property; and,

Findings:

- See findings under A(1) and A(2);
- The proposal would meet all other Chapter 804 design standards;
- Conclusion: The character of the property included in the variance would **not be altered** in a manner that substantially departs from the characteristics sought to be achieved and maintained within the relevant zoning district.

(4) It would adequately address any other significant public health, safety, and welfare concerns raised during the hearing on the requested variance;

Findings:

- The Board of Zoning Appeals may request the petitioner to address any other significant public health, safety, and welfare concerns raised during the hearing;

(B) The approval, including any conditions or commitments deemed appropriate, would not affect the use and value of the area adjacent to the property included in the variance in a substantially adverse manner, because:

(1) The specific purposes of the design standard sought to be varied would be satisfied;

Findings:

- See findings under section A;
- The petition site and adjacent properties are a residential use;
- Conclusion: The specific purposes of the design standard sought to be varied **would be satisfied**;

(2) It would not promote conditions (on-site or off-site) detrimental to the use and enjoyment of other properties in the area (e.g., the ponding of water, the interference with a sewage disposal system, easement, storm water facility, or natural watercourse, etc.); and,

Findings:

- See Findings under Section A and B(1);
- There is no FEMA floodplain on site;
- Drainage from the existing structures run towards the southwest. Drainage from the proposed addition is not expected to interfere with this pattern;
- The petitioner's state that the addition will be built overhanging the slope versus pouring a foundation and disturbing the land (see Exhibit 1);
- Conclusion: It **would not** promote conditions detrimental to the use and enjoyment of other properties;

(3) It would adequately address any other significant property use and value concerns raised during the hearing on the requested variance; and,

Findings:

- The Board of Zoning Appeals may request the petitioner to address any other significant property use and value concerns raised during the hearing on the requested variance;

(C) The approval, including any conditions or commitments deemed appropriate, is the minimum variance necessary to eliminate practical difficulties in the use of the property, which would otherwise result from a strict application of the terms of the

Zoning Ordinance.

Findings:

- The proposed location of the addition is located partially within non-buildable area (15%);
- The petition site is located within the ECO Area 1 and consists of mainly slopes over 12%, making further development difficult;
- Petitioner has applied for two variances, which is the minimum necessary to add an addition to the existing Single Family Residence;
- The majority of the adjacent Single Family Residences exceed 1,000 sq. ft. of livable space making the existing home size unusual along E Windfree Ln;
- The majority of lots within the Windfree Estates Subdivision also experience steep slopes exceeding 15%;
- Conclusion: There **are practical difficulties** in the use of the property as defined in Chapter 801;

All variance approvals shall be considered to be conditional approvals. The Board shall have the authority to impose specific conditions as part of its approval in order to protect the public health, and for reasons of safety, comfort and convenience (e.g., to insure compatibility with surroundings). Variance approval applies to the subject property and may be transferred with ownership of the subject property subject to the provisions and conditions prescribed by or made pursuant to the Zoning Ordinance. **NOTE:** The Board must establish favorable findings for ALL THREE criteria in order to legally approve a design standards variance.

FINDINGS OF FACT: Environmental Constraints Overlay Area 3 (ECO 3)(18% Slope)

812-6 Standards for Design Standards Variance Approval: In order to approve an application for a design standards variance, the Board must find that:

(A) The approval, including any conditions or commitments deemed appropriate, will not be injurious to the public health, safety, and general welfare of the community, because:

(1) It would not impair the stability of a natural or scenic area;

Findings:

- Approval of the variance would allow the petitioner to add a 240 sq. ft. addition to an existing home and a 144 sq. ft. addition to the existing deck on a 0.49+/-acre;
- The site currently holds a 930 sq. ft. single family residence built in 1987, and a 1,104 s. ft. detached garage built in 2002;
- The lot and surrounding area is zoned Suburban Residential (SR) and ECO Area 1;
- The site is platted within the Windfree Estates Subdivision;
- There are no designated scenic areas adjacent to the petition site;
- There is no evidence that the addition would obstruct a natural or scenic view;
- Conclusion: It would **not impair** the stability of a natural or scenic area.

(2) It would not interfere with or make more dangerous, difficult, or costly, the use,

installation, or maintenance of existing or planned transportation and utility facilities;

Findings:

- See findings under A (1);
- The property has access from W Windfree Lane, a designated local road;
- The proposed construction will not interfere with water lines or the septic system;
- Conclusion: It would **not interfere** with or make more dangerous, difficult, or costly, the use, installation, or maintenance of existing or planned transportation and utility facilities.

(3) The character of the property included in the variance would not be altered in a manner that substantially departs from the characteristics sought to be achieved and maintained within the relevant zoning district. That is, the approval, singularly or in concert with other approvals - sought or granted, would not result in a development profile (height, bulk, density, and area) associated with a more intense zoning district and, thus, effectively re-zone the property; and,

Findings:

- See findings under A(1) and A(2);
- The proposal would meet all other Chapter 804 design standards;
- Conclusion: The character of the property included in the variance would **not be altered** in a manner that substantially departs from the characteristics sought to be achieved and maintained within the relevant zoning district.

(4) It would adequately address any other significant public health, safety, and welfare concerns raised during the hearing on the requested variance;

Findings:

- The Board of Zoning Appeals may request the petitioner to address any other significant public health, safety, and welfare concerns raised during the hearing;

(B) The approval, including any conditions or commitments deemed appropriate, would not affect the use and value of the area adjacent to the property included in the variance in a substantially adverse manner, because:

(1) The specific purposes of the design standard sought to be varied would be satisfied;

Findings:

- See findings under section A;
- The petition site and adjacent properties are a residential use;
- Conclusion: The specific purposes of the design standard sought to be varied **would be satisfied;**

(2) It would not promote conditions (on-site or off-site) detrimental to the use and enjoyment of other properties in the area (e.g., the ponding of water, the interference

with a sewage disposal system, easement, storm water facility, or natural watercourse, etc.); and,

Findings:

- See Findings under Section A and B(1);
- There is no FEMA floodplain on site;
- Drainage from the existing structures run towards the southwest. Drainage from the proposed addition is not expected to interfere with this pattern;
- The petitioner's state that the addition will be built overhanging the slope versus pouring a foundation and disturbing the land (see Exhibit 1);
- Conclusion: It **would not** promote conditions detrimental to the use and enjoyment of other properties;

(3) It would adequately address any other significant property use and value concerns raised during the hearing on the requested variance; and,

Findings:

- The Board of Zoning Appeals may request the petitioner to address any other significant property use and value concerns raised during the hearing on the requested variance;

(C) The approval, including any conditions or commitments deemed appropriate, is the minimum variance necessary to eliminate practical difficulties in the use of the property, which would otherwise result from a strict application of the terms of the Zoning Ordinance.

Findings:

- The proposed location of the addition is located partially within non-buildable area (12%);
- The petition site is located within the ECO Area 1 and consists of mainly slopes over 12%, making further development difficult;
- Petitioner has applied for two variances, which is the minimum necessary to add an addition to the existing Single Family Residence;
- The majority of the adjacent Single Family Residences exceed 1,000 sq. ft. of livable space making this a common issue along E Windfree Ln;
- The majority of lots within the Windfree Estates Subdivision also experience steep slopes exceeding 12%;
- Conclusion: There **are practical difficulties** in the use of the property as defined in Chapter 801;

All variance approvals shall be considered to be conditional approvals. The Board shall have the authority to impose specific conditions as part of its approval in order to protect the public health, and for reasons of safety, comfort and convenience (e.g., to insure compatibility with surroundings). Variance approval applies to the subject property and may be transferred with ownership of the subject property subject to the provisions and conditions prescribed by or made pursuant to the Zoning Ordinance. **NOTE:** The Board must establish favorable findings for ALL THREE criteria in order to legally approve a design standards variance.

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QUESTIONS FOR STAFF - 2007-VAR-43 & 2007-VAR-44 - Hardiman

Kaczmarczyk: Does anyone have any questions of staff? Is the petitioner here?

**PETITIONER/PETITIONER'S REPRESENTATIVE –
2007-VAR-43 & 2007-VAR-44 - Hardiman**

Hardiman: Yes. I am. Can you hear me ok?

Kaczmarczyk: Would you like to speak?

Hardiman: Sure. Thank you.

Kaczmarczyk: I need to swear you in. Do you swear to tell the truth and nothing but the truth?

Hardiman: I do.

Kaczmarczyk: Alright, thank you.

Hardiman: My name is Lisa Hardiman. Thank you for this opportunity. The reason I want to build this 12' by 20' addition is so we can increase the size of my kitchen and dining area. I purchased this home back in 1988 when I was 21 years old at the time and at that time I didn't consider cooking as something I was interested in. But now that I am much older and I have children and they bring friends I want to cook. I just don't have the space. I currently have a 10' by 10' kitchen and that includes the appliances and the counter tops. So if I even want to do any vegetable chopping I have to put a board over my sink because we just don't have the space. So it is time. We are ready to build on. About a year ago we starting contacting contractors to give us some design plans and what is best way to get a bigger and better kitchen. 5 of those contractors came back and said the less evasive way to do it is to just to go out to the side of the house where the kitchen is already on that side and go out 12 feet and 20 feet. We are not wanting to put in a block foundation. So we are going to have minimal disturbance to the soil. It was going to be the most cost effective too and we wouldn't have to change our hvac. It was just going to be the most efficient way for these plans. I did however look into seeing if there was another way to increase the kitchen side by maybe going out the front and all contractors came back and said you could do that but then you are going to have to change your roofline, you are going to have to tear out your bathroom, you are going to have to do plumbing design changes. So, it like over doubled the cost, so it just wasn't in our budget to even do that. So, then that is when we decided. We hired a designer, an architect to do the drawings and that is where we are now. But I wanted to mention that the architect that came out who is well known in the community, when he was looking he didn't really feel like that we were, he felt like we were right around the 12 percent. He thought we were within it. He didn't think that we would need a variance at that time. That is when I talked to Anne and Rebecca, they were like, well, you could get a surveyor but according to the geographics out here it looks like you already are. So, that is why we went ahead. So, that is where we are. I just wanted to mention that I did most of my neighbors have bump-outs, so I took pictures of those so you could see that. So, it is not out the normal for my neighborhood to have these

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additions built on and they are all on slopes too. I think that is all that I have. Do you have any questions for me?

Kaczmarczyk: Do you have any questions for the petitioner? Anyone? Ok, I didn't see anyone. Thank you so much, Lisa.

Hardiman: Thank you.

Kaczmarczyk: Anyone else here like to speak on behalf of this petition? Seeing none. Would anyone like to speak against this petition? Seeing none. I would entertain a motion.

SUPPORTERS –2007-VAR-43 & 2007-VAR-44 – Hardiman: None

FURTHER SUPPORTERS - 2007-VAR-43 & 2007-VAR-44 – Hardiman: None

REMONSTRATORS - 2007-VAR-43 & 2007-VAR-44 – Hardiman: None

**ADDITIONAL QUESTIONS FOR STAFF –
2007-VAR-43 & 2007-VAR-44 – Hardiman: None**

FURTHER QUESTIONS FOR STAFF – 2007-VAR-43 & 2007-VAR-44 - Hardiman

Kaczmarczyk: Anyone ready to make a motion for me?

Hosea: Yes, I can do that.

Kaczmarczyk: Thank you William.

Hosea: **In case number 2007-VAR-43 and 2007-VAR-44, Hardiman request for design standards variance to Chapter 804 Buildable Area and Chapter 825 ECO Area 1, I recommend approval.**

Guerrettaz: Can I make a **friendly amendment** to that?

Hosea: Yes.

Guerrettaz: I am just thinking if for some reason it would happen that they, that the Hardiman's would like to have a foundation versus the piers in case that doesn't work that that's not something that would kick them back into the process or since it is in the packet it wouldn't bother me if they decided they needed to do a footing or a foundation instead of the piers. Can we add that if does change it doesn't change our recommendation?

Wilson: Couldn't we just say that **the variance will be for the proposed footprint? That would give them the ability to disturb area underneath the addition, whether it be for a foundation for piers.** Does that make sense?

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Guerrettaz: That matches my concern or question.

Wilson: I think that is what you were getting out, yeah.

Kaczmarczyk: I will second that. Larry, do you want to call the roll?

Wilson: I see will. The vote is petition 2007-VAR-43 and 207-VAR-44, variances from the ECO Area and the 15 percent slope Buildable Area respectively. A vote in favor is a vote to approve both the variances based upon the findings, with the understanding that the variance would apply the area making up the footprint of the proposed addition. Again, a vote in favor is a vote to approve the variances for both buildable area and Chapter 825 ECO Area slope restrictions. William Hosea?

Hosea: Yes.

Wilson: Mary Beth Kaczmarczyk?

Kaczmarczyk: Yes.

Guerrettaz: You cut out Larry.

Wilson: I am sorry. Did you hear me? Vicky Sorensen?

Sorensen: Yes.

Wilson: Margaret Clements?

Clements: Yes.

Wilson: Bernie Guerrettaz?

Guerrettaz: Yes.

Wilson: Both variances are granted by a 5 to 0 vote.

The motion in cases 2007-VAR-43, Hardiman ECO Area 1 Variance from Chapter 825 and 2007-VAR-44, Hardiman Buildable Area from Chapter 804, in favor of approving both the variances, carried unanimously (5-0).

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NEW BUSINESS

- 4. 2007-CDU-02 **Zimmer Auto Repair Services Conditional Use Variance**
- 5. 2007-VAR-45 **Zimmer Minimum Lot Width Variance from Chapter 804**
- 6. 2007-VAR-46 **Zimmer Side Yard Setback Variance from Chapter 804**

One (1) 5.67 +/- acres parcel in Richland Township, Section 26 at 2444 N Hartstrait RD. **Zoned AG/RR.**

BOARD ACTION: Kaczmarczyk introduced the petition.

STAFF ACTION:

Payne: Thank you Mary Beth. Actually are those variance numbers right? It should be 45 and 46.

Kaczmarczyk: I have got 54 and 55.

Payne: Ok. We will check on that. Going forward this is a petition that has 3 parts to it; a Conditional Use request, a Minimum Lot Width request and a Side Yard Setback request. This is property located at 2444 North Hartstrait Road and it is zoned Agricultural/Rural Reserve. Summary and background on this petition, I just went over the request. The purpose is related to the owner who is proposing to have an Automobile Repair Services Minor use at this location and this is a Conditional Use in the Agricultural/Rural Reserve zone. Related to the design standards the lot width of the property measures approximately 179' feet. In the Agricultural/Rural Reserve zoning district a 200' foot width is required. Then the third piece is a petition for a Side Yard Setback. It relates to the petitioner's request to place accessory structure 25' feet from property line at the side yard and for nonresidential structures, which this structure would be considered. If the Conditional Use setback requirement would be at least 50' feet. Again, this is one parcel that contains about 5.67 acres. It is in Richland Township Section 26. It is currently zoned Agricultural/Rural Reserve and the Comprehensive Plan as designated it as MCUA Rural Transition. There is some slope present on the property, however where the petitioner is proposing to place the garage slope is not a concern and there are no major site conditions at this location either. Here is an illustration that I wanted to provide just to give a little bit better context. You can see that the blue square is the proposed location of the garage. This is where the petitioner would prefer to place his garage and again it is 25' feet from the side yard setback and a 50' foot distance is required. The red dot shows the location of the garage if it were placed outside of the side yard setback. It would be centered in the lot there. The green shows the proposed driveway. There is an existing driveway cut and driveway to this lot. This proposed driveway leading to the business garage would just be an extension of the existing driveway and then finally in the yellow is the existing septic. This property had quite a few mature established trees including a persimmon grove and sort of the sequence of things on the property included a house, the septic, persimmon grove and then the garage. Regarding the location of the proposed garage it was somewhat constrained just by the existing elements there on the site. Here I wanted to show you the proposed driveway that would lead to the garage. To right in this image is a wooded area toward the back that is owned by the property owners to the south of the petitioner's lot and I just thought that that was a fairly good natural buffer that already exists to sort of shelter the driveway for a length at least as well as the proposed garage. Because the garage would sit at the end sort of at the grassy area here. This is a shot looking west toward Hartstrait Road. Here I am standing at the edge of the septic field looking back in the direction where the proposed garage would be and the petitioner

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ideal would like to locate it behind septic field and the permission grove. Here I included a photograph if the petitioner were to build or to locate the garage outside of setbacks at the 50' foot mark that is required for nonresidential structures he would likely have to take down these 2 trees. This is the petitioner letter where he describes his objective and gives some detail on what he is planning to do. This is the petitioner's site plan. Hopefully you had a chance to view that in detail. Just in the last day or two, we, or I should say I received a letter from Mr. Zimmer, the petitioner, his neighbor to the north and it is in support of this use. So, I wanted to include that. Finally, the recommended motions. Staff recommends approval of the Conditional Use request for Automotive Repair Services, Minor in the AG/RR zoning district based on the finding of facts. Staff recommends approval of the Design Standards Variance request from the Minimum Lot Area requirement in Chapter 804 of the Monroe County Zoning Ordinance. Finally, staff recommends approval of the Design Standards Variance request from the Side Yard Setback requirement in Chapter 804 of the Monroe County Highway Zoning Ordinance, Monroe County Zoning Ordinance. We don't have a Highway Ordinance.

RECOMMENDED MOTIONS:

Approve the Conditional Use request for Automobile Repair Services, Minor in the AG/RR zoning district based on the finding of facts.

Approve the Design Standards Variance request from the Minimum Lot Area requirement in Chapter 804 of the Monroe County Zoning Ordinance.

Approve the Design Standards Variance request from the Side Yard Setback requirement in Chapter 804 of the Monroe County Highway Zoning Ordinance.

FINDINGS OF FACT FOR CONDITIONAL USE: AUTOMOBILE REPAIR SERVICES, MINOR

In order to approve a conditional use, the Board must have findings pursuant to Chapter 813-5 Standards for Approval. The Board must find that:

- (A) **the requested conditional use is one of the conditional uses listed in Chapter 813-8 (for the traditional County planning jurisdiction) or Table 33-3 (for the former Fringe) for the zoning district in which the subject property is located. In addition to the other relevant standards imposed by or pursuant to this chapter, the standards, uses and conditions set forth in Section 813-8 are hereby incorporated as standards, uses and conditions of this chapter;**

Findings:

- The petition property is zoned Agriculture/Rural Reserve (AG/RR) as defined by the Chapter 802;
- Automobile Repair Services, Minor is a Conditional Use in the AG/RR zone per Chapter 802 and is subject to conditions #50 and #53 pertaining to permitted uses in zoning districts.

- (B) **all conditions, regulations and development standards required in the Zoning Ordinance shall be satisfied;**

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Findings:

- See Findings under (A);
- Condition #50 & #53 in Chapter 802 states several conditions that must be met to obtain a conditional use for Automobile Repair Services, Minor;
- Condition #53 states the use is only permitted on 5 acres or greater, which the property in question is 5.67 acres;
- The petitioner plans to build a detached garage for the business if approved;
- Two variances have been requested from the Design Standard Requirements of Chapter 804 in order to build the garage;
- This property is not part of a subdivision.

(C) granting the conditional use shall not conflict with the general purposes of the Zoning Ordinance or with the goals and objectives the Comprehensive Plan;

Findings:

- The Monroe County Comprehensive Plan designates the site as MCUA Rural Transition;
- The petition site is 5.67 +/- acres;
- The current structure on the lot, a single family residence, meets design standards for this zone;
- The proposed structure, a 30' x 40' detached garage, will meet all other design standards for this zone if a variance to the minimum lot width and side yard setback is granted;
- Automobile Repair Services, Minor is a conditional use in Chapter 802;
- The definition for Automobile Repair Services, Minor in Chapter 802 is *"The replacement of any mechanical part or repair of any mechanical part including the removal of the engine head or pan, engine transmission or differential; and upholstering service, as an accessory to a residential use."*

(D) the conditional use property can be served with adequate utilities, access streets, drainage and other necessary facilities;

Findings:

- The petition site maintains frontage along N Hartstrait RD, which is a major collector road;
- The property has access to water and is on a private septic;
- The accessory garage will not have a septic system attached to it as petitioner has stated no need for the garage to connect to septic;
- Drainage primarily flows to the north east corner of the parcel; the garage is proposed to be located on the south east corner of the parcel.

(E) the conditional use shall not involve any element or cause any condition that may be dangerous, injurious or noxious to any other property or persons, and shall comply with performance standards delineated in this ordinance;

Findings:

- See findings above;

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- The petitioner would have to operate the automobile repair service in accordance with the conditions required by the Monroe County Zoning ordinance.

(F) the conditional use shall be situated, oriented and landscaped (including buffering) to produce a harmonious relationship of buildings and grounds with adjacent structures, property and uses;

Findings:

- The petitioner would need to screen the cars stored outside from view, either with landscaping or fencing. Staff will be required to review the site plan for compliance if the conditional use is granted;
- The auto repair services would take place inside the structure, as required under condition #50 of Chapter 802.
- Petitioner's lot has existing large trees that naturally help to screen the proposed garage.

(G) the conditional use shall produce a total visual impression and environment which is consistent with the environment of the neighborhood;

Findings:

- The area is largely residential, though the property is well buffered with trees from neighboring homes;
- The proposed location of the garage is situated so that it is as far away from the adjacent neighbor's residence as possible and therefore relatively screened from their view;
- The properties to the north and south are zoned Agriculture/Rural Reserve (AG/RR);
- The property directly to the east is zoned Light Industrial (LI).

(H) the conditional use shall organize vehicular access and parking to minimize traffic congestion in the neighborhood; and,

Findings:

- There is an area where vehicles may be parked outside of the right-of-way and on the petitioner's property;

(I) All permits required by other Federal, State and local agencies have been obtained.

Findings:

- Any new proposed structure will require Building Department and Planning Department review;
- The petitioner does not have any other state permits and has stated that he does not need them for the use.

Additionally, in order to approve a conditional use for an Automobile Repair Services, Minor conditional use, the Board must have findings pursuant to Chapter 802: Conditions for Permitted Uses. The Board must find that:

Automobile Repair Services, Minor

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Condition 50(1). Conducted inside a fully enclosed garage located on a parcel 5 acres in size or greater.

Findings:

- The petitioner has stated that the cars being repaired will be worked on inside the garage;
- The property is 5.67 acres;

Condition 50(2). Applies to passenger automobiles and trucks not in excess of 7,000 pounds gross weight.

Findings:

- This would be a requirement of the use;

Condition 50(3). No more than (5) five vehicles shall be stored outside on the premises.

Findings:

- The petitioner has stated he will only work on three or four vehicle at a time and will not store any vehicles outside on the premise;
- Compliance with this would be a requirement of the use.

Condition 50(4). No vehicle may be stored beyond sixty days.

Findings:

- This would be a requirement of the use.

Condition 50(5). Vehicles stored outdoors must be screened from view in all directions by an appropriate fence or similar enclosure.

Findings:

- This would be a requirement of the use;
- A fence may be required in order to screen cars. Planning staff will review a site plan prior to the commencement of the use.

Condition 50(6). Vehicles intended for parts, engines, transmissions and all similar items to be used in future repairs shall be stored indoors.

Findings:

- This would be a requirement of the use.

Condition 50(7). The uses shall follow all home based business design standards.

Findings:

- The home based business standards include: “Use shall be conducted within the buildings or structures on the site. Non-agricultural tools, vehicles, and equipment shall be stored so as to not be visible from the street or adjoining property. In addition, storage areas must be screened from view by an appropriate fence or similar enclosure.” This is a requirement of the use. The owner has stated repairs will take place inside the structure;
- The definition of a home based business is “An accessory occupational use conducted in a residential dwelling by the inhabitants that is clearly incidental to the use of the structure for residential purposes and does not change the residential character of the site. A home based business is conducted in the primary residential structure or one accessory structure, that shall not have more than two employees living off-site, permitting on-site sales of merchandise constructed on-site or are incidental to services performed on-site, and are identified with minimal advertising signs as given in Chapter 807;”
- The petitioner lives on-site, and conducts the business inside an accessory structure on their lot;
- The petitioner has stated that they have less than two employees living off-site, provides incidental services;
- They currently have no advertising posted at the site.

Condition 53(1). Only permitted on lots 5 acres or greater in the AG/RR, CR, and FR zoning districts.

- The property is 5.67 +/- acres.

FINDINGS OF FACT FOR: MINIMUM LOT WIDTH

812-6 Standards for Design Standards Variance Approval: In order to approve an application for a design standards variance, the Board must find that:

(A) The approval, including any conditions or commitments deemed appropriate, will not be injurious to the public health, safety, and general welfare of the community, because:

(1) It would not impair the stability of a natural or scenic area;

Findings:

- Approval of the variance would allow the petitioner to develop this pre-existing nonconforming lot of record;
- The site is currently about 179 feet wide. The AG/RR zone requires a minimum of 200 feet in lot width;
- The site contains an existing single-family residence with an attached garage;
- The area is not located within the floodplain or the Environmental Constraints Overlay area;
- Conclusion: It would not impair the stability of a natural or scenic area.

(2) It would not interfere with or make more dangerous, difficult, or costly, the use, installation, or maintenance of existing or planned transportation and utility facilities;

Findings:

- N Hartstrait Road is a major collector road maintained by the County Highway Department;
- The septic system is currently located to the east of the existing single family residence and will not be interfered with the proposed garage location;
- Conclusion: It would not interfere with or make more dangerous, difficult, or costly, the use, installation, or maintenance of existing or planned transportation and utility facilities;

(3) The character of the property included in the variance would not be altered in a manner that substantially departs from the characteristics sought to be achieved and maintained within the relevant zoning district. That is, the approval, singularly or in concert with other approvals - sought or granted, would not result in a development profile (height, bulk, density, and area) associated with a more intense zoning district and, thus, effectively re-zone the property; and,

Findings:

- See Findings under Section A(1) and A(2);
- The zoning of the surrounding adjacent properties is Agriculture/Rural Reserve (AG/RR) and Light Industrial (LI);
- There are other parcels nearby that are zoned AG/RR and have less than a minimum of 200 foot widths;
- Conclusion: The character of the property included in the variance would not be altered in a manner that substantially departs from the characteristics sought to be achieved and maintained within the relevant zoning district;

(4) It would adequately address any other significant public health, safety, and welfare concerns raised during the hearing on the requested variance;

Findings:

- The Board of Zoning Appeals may request the petitioner to address any other significant public health, safety, and welfare concerns raised during the hearing;

(B) The approval, including any conditions or commitments deemed appropriate, would not affect the use and value of the area adjacent to the property included in the variance in a substantially adverse manner, because:

(1) The specific purposes of the design standard sought to be varied would be satisfied;

Findings:

- See Findings under Section A(1);
- Any proposed structure on this lot requiring a building permit would need a minimum lot width variance;
- Conclusion: Approval of the variance would satisfy the design standard sought to be

varied.

(2) It would not promote conditions (on-site or off-site) detrimental to the use and enjoyment of other properties in the area (e.g., the ponding of water, the interference with a sewage disposal system, easement, storm water facility, or natural watercourse, etc.); and,

Findings:

- See Findings under Section A(1);
- The property drains to the north east;
- The proposed location of the garage will not interfere with existing septic system;
- There is no FEMA floodplain on the site;
- There are no visible karst features on the site;
- Conclusion: It would not promote conditions detrimental to the use and enjoyment of other properties in the area.

(3) It would adequately address any other significant property use and value concerns raised during the hearing on the requested variance; and,

Findings:

- The Board of Zoning Appeals may request the petitioner to address any other significant property use and value concerns raised during the hearing on the requested variance;

(C) The approval, including any conditions or commitments deemed appropriate, is the minimum variance necessary to eliminate practical difficulties in the use of the property, which would otherwise result from a strict application of the terms of the Zoning Ordinance.

Findings:

- There is a hardship in that the property owner cannot do any new development on this pre-existing nonconforming legal lot of record without first receiving a lot width variance. The lot was in existence prior to the 1997 zoning ordinance and therefore was made nonconforming by the ordinance. The lot meets minimum lot size but not width. Adjoining parcels to the north and south also do not meet minimum lot width.

FINDINGS OF FACT FOR: SIDE YARD SETBACK

812-6 Standards for Design Standards Variance Approval: In order to approve an application for a design standards variance, the Board must find that:

(A) The approval, including any conditions or commitments deemed appropriate, will not be injurious to the public health, safety, and general welfare of the community, because:

(1) It would not impair the stability of a natural or scenic area;

Findings:

- Approval of the variance would allow further development on this pre-existing non-conforming, legal lot of record;
- The proposed garage is 30' x 40';
- There are no designated natural or scenic areas nearby;
- The petitioner's site is predominately flat with the majority of the property without steep slopes over 15 percent;
- The petitioner's site has several existing mature trees, including a persimmon grove. Consideration of these existing trees and the desire to avoid cutting them down contributed to the preferred location of the garage;
- **Conclusion:** Approval of the variance would not impair the stability of a natural or scenic area.

(2) It would not interfere with or make more dangerous, difficult, or costly, the use, installation, or maintenance of existing or planned transportation and utility facilities;

Findings:

- See Findings A(1);
- N Hartstrait RD is a major collector road that runs along the western property line;
- The proposed garage is located 25' from the southern property boundary, an encroachment of 25' into the side yard setback;
- Non-residential structures require a 50 foot side setback in AG/RR, whereas residential structures require a 15 foot setback;
- The garage do not have an impact on utilities;
- The site utilizes a septic system, however, petitioner states he does not intend to connect the proposed garage to the existing septic because he states there will be no bathroom facilities in the proposed garage;
- **Conclusion:** Approval of the variance would not interfere with or make more dangerous, difficult, or costly, the use, installation, or maintenance of existing or planned transportation and utility facilities.

(3) The character of the property included in the variance would not be altered in a manner that substantially departs from the characteristics sought to be achieved and maintained within the relevant zoning district. That is, the approval, singularly or in concert with other approvals - sought or granted, would not result in a development profile (height, bulk, density, and area) associated with a more intense zoning district and, thus, effectively re-zone the property; and,

Findings:

- See Findings A(1) and A(2);
- The property is zoned Agriculture Rural Reserve (AG/RR);
- The side yard setback in the AG/RR zoning district is 50' for non-residential structures;
- Surrounding uses are residential, agricultural and light industrial;
- The Comprehensive Plan designates this area as MUA Rural Transition;
- This is a pre-existing lot that has not changed dimensions since before the current zoning

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ordinance;

- **Conclusion:** Approval of the variance would not alter the character of the property in a manner that substantially departs from the characteristics sought to be achieved and maintained with the relevant zoning district.

(4) It would adequately address any other significant public health, safety, and welfare concerns raised during the hearing on the requested variance;

Findings:

- The Board of Zoning Appeals may request the petitioner to address any other significant public health, safety, and welfare concerns raised during the hearing;

(B) The approval, including any conditions or commitments deemed appropriate, would not] affect the use and value of the area adjacent to the property included in the variance in a substantially adverse manner, because:

(1) The specific purposes of the design standard sought to be varied would be satisfied;

Findings:

- See Findings A(1) and A(3);
- The purpose of the side yard setback is to preserve the general character of zoning district;
- **Conclusion:** Approval of the variance would not significantly impact the purposes of the design.

(2) It would not promote conditions (on-site or off-site) detrimental to the use and enjoyment of other properties in the area (e.g., the ponding of water, the interference with a sewage disposal system, easement, storm water facility, or natural watercourse, etc.); and,

Findings:

- See Findings A(1) and A(3);
- The lot drains predominately to the north east and away from the existing residential structure and proposed garage;
- The proposed garage will not interfere with any easements or utilities;
- **Conclusion:** There are no foreseeable detrimental conditions to the use and enjoyment of other properties that would result from the proposed expansion.

(3) It would adequately address any other significant property use and value concerns raised during the hearing on the requested variance; and,

Findings:

- The Board of Zoning Appeals may request the petitioner to address any other significant property use and value concerns raised during the hearing on the requested variance;

(C) The approval, including any conditions or commitments deemed appropriate, is the

minimum variance necessary to eliminate practical difficulties in the use of the property, which would otherwise result from a strict application of the terms of the Zoning Ordinance.

Findings:

- Practical difficulties have been demonstrated in that existing mature trees combined with the location of the septic constrain the placement of the proposed garage;
- **Conclusion:** Petitioner has applied for two variances, which is the minimum necessary in order to further develop the lot and allow for the proposed garage addition.

All variance approvals shall be considered to be conditional approvals. The Board shall have the authority to impose specific conditions as part of its approval in order to protect the public health, and for reasons of safety, comfort and convenience (e.g., to insure compatibility with surroundings). Variance approval applies to the subject property and may be transferred with ownership of the subject property subject to the provisions and conditions prescribed by or made pursuant to the Zoning Ordinance.

NOTE: The Board must establish favorable findings for ALL THREE criteria in order to legally approve a design standards variance.

QUESTIONS FOR STAFF - 2007-CDU-02, 2007-VAR-45, 2007-VAR-46 – Zimmer

Wilson: Rebecca?

Payne: Yes.

Wilson: I think rather than your recommended motions on the screen shows it is for Minimum Lot Area. I believe it is for Minimum Lot Width.

Payne: That is correct. That is a typo. Thank you for catching that. It is Minimum Lot Width. He does meet the acreage requirement.

Kaczmarczyk: Any questions for Rebecca?

Guerrettaz: Quick question. Is the agenda correct, do we know for 2007-VAR-54 and 2007-VAR-55?

Payne: I believe it is.

Guerrettaz: Ok.

Nester Jelen: The numbers should be 2007-VAR-45, 2007-VAR-46.

Guerrettaz: I was looking at the staff report. Sorry about that. Thank you.

Nester Jelen: The agenda is correct but the staff report lists it a little bit different.

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Kaczmarczyk: Any other questions for Rebecca? Vicky?

Sorensen: I have a question regarding the screening of vehicles. Would you consider the trees standard and that they wouldn't have to do any other kind of screening?

Payne: No, I believe that a little more screening would be necessary. I just sort of wanted to illustrate that there is already some existing screening now. Mind you that is not on the petitioner's property, it belongs to the neighbor, but still I felt it was worth putting in there.

Sorensen: Thank you.

Kaczmarczyk: Any other questions for staff? Seeing none. Is the petitioner here? Is the petitioner here, Jackie?

Nester Jelen: I see Mr. Zimmer on and he is muted. I can ask him to unmute. Mr. Zimmer, can you hear us? If you are speaking we can't hear you.

**PETITIONER/PETITIONER'S REPRESENTATIVE –
2007-CDU-02, 2007-VAR-45, 2007-VAR-46 – Zimmer**

Zimmer: Hello?

Nester Jelen: We can hear you now.

Zimmer: Sorry about that. Can I be seen? I am not seeing myself so I am not sure if you can see me or not.

Kaczmarczyk: I can't see you either but do you wish to speak?

Zimmer: Yes, I would. First of all...

Kaczmarczyk: Let me swear you in. Do you swear to tell the truth and nothing but the truth?

Zimmer: I do.

Kaczmarczyk: Alright proceed sir.

Zimmer: I do appreciate the Board taking this into consideration and I greatly appreciate Rebecca. She has been such a huge help in getting all of this together and kind of walking us through the process. Thank you so much for your help in this. My wife and I moved from North Carolina, the Raleigh area as it says in the letter to be a help to our folks and bought this property. Before we even purchased this property we were talking to Rebecca to see what we would need to do because we knew we wanted some property where I would be able to have a small business. It is not a large business. I ran this business for 11 years in Raleigh and very successfully. I enjoyed the business and owner/operator. No employees as I mentioned in the letter. I don't really foresee, I know there would be concerns about a lot of traffic and things like that, that I am sure will be addressed but

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usually most days for me are 2 to 3 customers, if that and hopefully within a year or two I am kind of looking to be semi-retired and hopefully working maybe two or three days a week, so not even being a full week. But for a while I would be wanting to be pretty steady to kind of build the business up but that is kind of where we are at. I appreciate the consideration and that is why we looked for a property the size that we did. We didn't realize that we were going to have issues with the width of the property. Again, finding that out kind of after the fact, kind of realizing that actually most of the properties alongside us have the same width so it would have the same issues. That is about it.

Kaczmarczyk: Any questions for the petitioner? Is there anyone else here who would like to speak on behalf of the petition?

Nester Jelen: Mary Beth, do you want supports first and remonstrators second?

Kaczmarczyk: Sure, yes. Supporters first. Anyone want to speak on behalf?

Nester Jelen: I am not seeing anyone in support. Anyone want to speak against the petition?

SUPPORTERS –2007-CDU-02, 2007-VAR-45, 2007-VAR-46 – Zimmer: None

FURTHER SUPPORTERS - 2007-CDU-02, 2007-VAR-45, 2007-VAR-46 – Zimmer: None

REMONSTRATORS - 2007-CDU-02, 2007-VAR-45, 2007-VAR-46 – Zimmer

Nester Jelen: Valerie DeWar?

DeWar: Are we unmuted now?

Nester Jelen: Yes, we can hear you.

Kaczmarczyk: Would you like to speak against the petition, ma'am?

DeWar: Well, yes.

Kaczmarczyk: Let me swear you in first, ok.

DeWar: We are the neighbors to the south.

Kaczmarczyk: I need to swear you in first, ma'am. Do you swear to tell the truth and nothing but the truth?

DeWar: I do.

Kaczmarczyk: Ok, proceed.

DeWar: Thank you. Thank you for hearing us and also thank you to Rebecca and the staff as we

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questioned this and needed to gather information. We certainly did not want to, we wanted to give this every consideration because we enjoy having good neighbors and wanted to get off on a good start. We do have some questions however after looking the material over there are questions that we have that may actually be answered but we are not seeing it. For example; the driveway looks as if it is going to follow right along the property line. Is that correct?

Zimmer: Yes that would be correct. That is really the best place to put it without going kind of right down the middle of the property and trying to avoid the trees and things.

DeWar: When you put in the driveway how much room do you have between the property line and the start of the driveway? Is it 2 feet, 5 feet, 10 feet?

Zimmer: I honestly don't know what the distances are when it comes to driveways. My thought was there wasn't really a setback on driveways but I am be wrong.

DeWar: I don't know. Ours is 6 foot so I assumed it was.

Kaczmarczyk: Rebecca, is there a setback on the driveway?

Payne: I don't think there is actually. Jackie, you can correct me if I am wrong on that. I think the driveways don't qualify for a setback requirement.

Kaczmarczyk: This is going to be an extension of an existing driveway that is already there? Is that what I understand?

Payne: Yes.

Kaczmarczyk: So, it is just an extension of that driveway. Ok.

DeWar: But it looks as if it would curve more to the property line. The driveway is about probably about 12 feet from the property line at the current place that it is.

Zimmer: That is true. It does come closer to the southern property line.

DeWar: Would that be paved or gravel?

Zimmer: I would like to pave it eventually but it would start out being gravel.

DeWar: We have not had since our neighbors have moved in we have not had what I would call a good rain soak yet and there is a considerable drainage issue from the northwest corner of our property down toward their property. It flows right through the center of the property, the center of the Zimmer property. Where the driveway would be will alter that drainage area considerable and that is a bit of a concern. Second of all, there is no, there is a statement in request that there would be no need for a septic system. So, I am assuming, what kind of plumbing is intended?

Zimmer: There is no plumbing. There is not going to be a bathroom there. I figure I will have a

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golf cart and no.

DeWar: If there is no water, I don't know what the coding is from OSHA guidelines or whatever where garages are concerned nowadays, is that not any coding for eye wash or quick shower or water for fire extinguishing or whatever for hazards and safety?

Zimmer: There would be fire extinguishers but as far as I don't know that there is any requirement that I have plumbed water to the building.

DeWar: Where would that be found?

Nester Jelen: Typically, when we are doing public comment it is not between the petitioner and the remonstrator but this is helpful. You are answering questions. The Building Department is the next step if the variance is granted. Mr. Zimmer will have to check with the Building Department and meet the building code for the use of the garage that is being proposed.

DeWar: Thank you because these are things that we have no knowledge of. Let me see I have got another. We have in the buffer that you have a growth on the property line, actually a great deal of that is ready to come out this fall. We did not know that was an issue because it is encroaching on our pasture land. Almost all of that buffer is on our property and we have already started clearing out some of it as you may or may not have noticed on the part that is closest to our house. Probably another 20 feet or so of it will be cleared out within the next year or two. So, we won't have that buffer between us and that garage building. We just thought you should know that and we do a retention collection pond for a bad rain and we will keep that. We will maintain that, that is good for both our properties. We have raised cattle back there before and we certainly would want to do that again. This is not land in spite of our grey hair this is land that will be staying in our family for the next generation. If they choose to have farm animals etcetera because of the zoning we certainly would not want something that would be extremely noisy and bother the cows for lack of a better term. We go along with Andy Anderson on the other side of the Zimmer's. We think they are going to be good neighbors and we hate to be a thorn in the side type of thing. We have thought about this quite a bit. Generally we believe in entrepreneuring endeavors, we are a self-business owners as well and we believe people should have the right to do what they want to with their own property. However, both of these believes have one caveat and that is that they should not interfere with the rights of others. We are concerned that our own property value will decrease with this because it will change the appeal of our property. Once we go down the slippery slope of variances and conditional guidelines time creates the ability to stretch those conditions and forget the guidelines. Thus growing something that is entirely different than what was first intended. So, what maybe a beautiful garage with 3 or 4 cars inside it being worked on, and who wouldn't like to have a good mechanic next door, we would be concerned that pretty soon those 3 cars outside become 5 or 6 cars and there is no one to be watching this kind of thing. So, we are concerned and we really wish we weren't going to have it next door. But whatever be the case what you decide we in the spirit of neighborliness we will welcome them to our neighborhood. Thank you.

Kaczmarczyk: Thank you, Valerie. Does anybody have any questions for her?

DeWar: And I didn't say that is my husband, Lloyd, I am sorry.

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Kaczmarczyk: Are there any questions for Valerie or Lloyd?

Wilson: I do want to clarify that they are asking for a Conditional Use for Auto Repair Minor, which was really designed to allow people to kind of be backyard mechanics, not to allow a full scale commercial garage, to have somebody that had 5 acres or more in the AG/RR district to work on cars legally. But there are conditions as far as the number of cars on the lot. Auto parts cannot be stored outside. Cars have to be screened. Those are conditions that if the Conditional Use is granted is subject to those conditions and those would have to be followed for the use to be legal.

DeWar: Can I ask a question on that?

Wilson: Sure.

DeWar: Who is going to monitor that?

Wilson: We find that the neighbors monitor things very well.

DeWar: We read that in his petition. We read the petition through many times and we did see that, that is what we were talking about with the slippery slope.

Wilson: I will say this, that Planning Staff does monitor permits. We have a number of applications during the year and we will drive by and if we see something that is not in accordance with what the permit was, then we start an enforcement action. So, it is not totally dependent on the neighbors. Typically it is the neighbors that report but we also do monitoring on our own.

DeWar: We would ask that if you do grant this to please put it in the alternative site with the 50 foot and we like persimmons too so we hate to see the grove go.

Kaczmarczyk: Anyone else here wish to speak against this petition? Seeing no one. Does anyone have a motion for us?

**ADDITIONAL QUESTIONS FOR STAFF –
2007-CDU-02, 2007-VAR-45, 2007-VAR-46 – Zimmer**

Guerrettaz: I have got a question for Rebecca. In the proposed location how does the buffering work over there? At site plan review that will be reviewed, correct?

Payne: Correct.

Guerrettaz: But you won't utilize the existing trees on the neighbor's property for that buffer.

Payne: Well, no because we learned tonight those might be thinned out anyway, so yes, technically the petitioner it is his responsibility to provide the screening that will be expressed or required in the site plan going forward.

Zimmer: Can I make a comment?

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Kaczmarczyk: Yes, sir.

Zimmer: I have no problem with extra screening or anything. I certainly don't as the DeWar's mentioned I don't have any desire to be a pain to my neighbors either and incidentally I do live with my mother-in-law and so she is not going to let me have cars sitting around or a junky area back there. My wife is kind of the same way so I certainly appreciate their concerns and that would be something I would certainly. The size of the garage I wish to build would easily hold 5 vehicles and I would rarely have more than 2 or 3 vehicles even there. She won't let me keep any cars around for sure.

Kaczmarczyk: Alright, thank you sir. Ok, are we ready for a motion? Anyone ready to make a motion?

**FURTHER QUESTIONS FOR STAFF –
2007-CDU-02, 2007-VAR-45, 2007-VAR-46 – Zimmer**

Hosea: Yes.

Kaczmarczyk: Ok, thank you William.

Hosea: **In case number 2007-CDU-02, Conditional Use for Automobile Repair Services Minor of Chapter 813, 2007-VAR-45, Minimum Lot Width from Chapter 804, and 2007-VAR-46, Side Yard Setback from Chapter 804, the petitioner is Dave Zimmer, I recommend approval.**

Kaczmarczyk: I will **second** that motion. Please call the roll for us Larry.

Nester Jelen: You are on mute, Larry.

Wilson: I am going to do these separately just for the standpoint of...

Clements: Could I, I just unmuted myself. I am sorry I had a little difficulty and I have one question about the motion. The neighbors had requested a change to setback. Has that been included been included in the motion or is that not?

Wilson: Margaret, what I am going to do is to call 3 roll call votes on this, one on the CDU and then on the 2 variances. If the BZA decides you do not what to grant the variance from the Side Yard, then the 50 foot setback would be applied. Does that make sense?

Clements: Ok. Sorry for interrupting.

Hosea: Larry, can you explain that again?

Wilson: What I am going to do is do 3 different roll calls. The first one would be for the conditional use. If that is approved then the second one would be for the lot width variance, ok, and the third would be the design standards variance from the side yard. If the BZA does not grant the variance

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for the side yard, they could still build it but they would have to build it in the 50 foot setback.

Kaczmarczyk: And that is where they would be taking down the persimmon trees, is that correct?

Wilson: I don't know.

Payne: No, not necessarily.

Wilson: I didn't think that was necessarily the case.

Payne: It would just be 2 other trees but not the persimmon grove.

Hosea: Thank you.

Wilson: I will take the vote now. This will be the vote on granting the Conditional Use for Auto Repair Minor, for this parcel, Zimmer Auto Repair Minor Conditional Use. A vote in favor is a vote to grant the conditional use based upon the findings. Mary Beth Kaczmarczyk?

Kaczmarczyk: Yes.

Wilson: Vicky Sorensen?

Sorensen: Yes.

Wilson: Margaret Clements?

Clements: Yes.

Wilson: Bernie Guerrettaz?

Guerrettaz: Yes.

Wilson: William Hosea?

Hosea: Yes.

Wilson: The Conditional Use is granted by a 5 to 0 vote.

The motion in case 2007-CDU-02, Zimmer Auto Repair Services Conditional Use Variance, in favor of approving the variance, carried unanimously (5-0).

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Wilson: The next vote will be on 2007-VAR-45, which is the Minimum Lot Variance from Chapter 804. A vote in favor is a vote to approve the variance from the minimum lot width requirement. Vicky Sorensen?

Sorensen: Yes.

Wilson: Margaret Clements?

Clements: Yes.

Wilson: Bernie Guerrettaz?

Guerrettaz: Yes.

Wilson: William Hosea?

Hosea: Yes.

Wilson: Mary Beth Kaczmarczyk?

Kaczmarczyk: Yes.

Wilson: The Lot Width Variance is granted 5 to 0.

The motion in case 2007-VAR-45, Zimmer Minimum Lot Width Variance from Chapter 804, in favor of approving the variance, carried unanimously (5-0).

Wilson: Now we will call the roll on 2007-VAR-46, which is the variance form Side Yard Setback. A vote in favor is a vote to grant the variance of I believe 25 feet from the side yard setback from the standard 50 feet that would be required for this building. Again, a vote in favor is a vote to grant the variance. Margaret Clements?

Clements: No.

Wilson: Bernie Guerrettaz?

Guerrettaz: No.

Wilson: William Hosea?

Hosea: Yes.

Wilson: Mary Beth Kaczmarczyk?

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Kaczmarczyk: Yes.

Wilson: Vicky Sorensen?

Sorensen: No.

Wilson: The variance for the Side Yard Setback fails to 2 to 3, so to summary; the Conditional Use Variance was granted by 5 to 0, the Lot Width Variance was granted 5 to 0 and the Side Yard Setback Variance failed by a 2 to 3 vote.

The motion in case 2007-VAR-46, Zimmer Side Yard Setback Variance from Chapter 804, in favor of approving the variance, *failed* (2-3).

Nester Jelen: Larry, just to confirm, do they need to make a motion to deny the Side Yard Setback?

Wilson: I think when it is a 2 to 3 vote...

Schilling: Yes.

Wilson: Did Dave say yes?

Schilling: Yes. They need to have a motion to deny if the motion to approve failed there needs to be 3 votes on a motion to deny.

Wilson: Ok. Let me call the roll again. Again, this is on the Side Yard Setback ...

Kaczmarczyk: Somebody needs to make a motion.

Wilson: We need a motion to deny.

Clements: **I move that we deny the design standards variance request from the Side Yard Setback requirement in Chapter 804 of the Monroe County Highway Zoning Ordinance.**
Hello?

Guerrettaz: **I second.**

Wilson: It has been moved and seconded to deny variance 2007-VAR-46 for the Side Yard. A vote in favor is a vote to deny. Margaret Clements?

Clements: Yes.

Wilson: Bernie Guerrettaz?

Guerrettaz: Yes.

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Wilson: William Hosea?

Hosea: No.

Wilson: Mary Beth Kaczmarczyk?

Kaczmarczyk: No.

Wilson: Vicky Sorensen?

Sorensen: Yes.

Wilson: The Side Yard Setback is denied by a 3 to 2 vote. Are we ok there, Dave?

Schilling: Yes.

The motion in case 2007-VAR-46, Zimmer Side Yard Setback Variance from Chapter 804, in favor of *denying* the variance, carried (3-2).

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NEW BUSINESS

7. 2007-VAR-47

Brian Hall Rear Yard Setback from Chapter 833

One (1) 0.47+/- acre parcel in Perry Township, Section 20 at 4003 S. Rogers ST. **Zoned RE1.**

BOARD ACTION: Kaczmarczyk introduced the petition.

STAFF ACTION: Petition has been withdrawn by staff.

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NEW BUSINESS

- 8. 2008-VAR-48 Sparks Minimum Lot Width Variance from Chapter 804**
One (1) 10 +/- acre parcel in Perry Township, Section 27 at 2402 E
Schacht RD. **Zoned AG/RR.**

BOARD ACTION: Kaczmarczyk introduced the petition.

STAFF ACTION:

Myers: Alright, can you guys hear me ok?

Kaczmarczyk: Yes, sir.

Myers: Alright, this is the Sparks design standards variance for Minimum Lot Width from Chapter 804. We will go ahead and start with some summary and discussion here. The petitioner requests one design standards variance to Chapter 804 in order to build an approximate 490 square foot in-ground swimming pool with approximately 1,190 square feet of new deck area behind the existing residence. The lot contains an existing single family residence with a detached garage, a pole barn and an additional much older style pole barn farther back on the property. The petitioner's residential pool permit application was received by the Monroe County Building Department in July of this year. Upon Planning Staff review of that application, it was discovered that the petitioner's property does not meet the minimum lot width requirement of 200 feet for the zoning district. As such, the petitioner had to submit a variance in order to do any new development on that property given their minimum lot width. The petition site is zoned Agricultural/Rural Reserve. The minimum lot width requirement is 200 feet, and at building line for this petition site measured 180 feet. I will also note that there are multiple lots that are zoned Agricultural/Rural Reserve in this area that also do not meet this minimum standard. Here we have the location map. It is located at 2402 East Schacht Road. I am not sure if I am pronouncing that correctly but it is in Perry Township, Section 27. The current zoning is Agricultural/Rural Reserve. The adjoining parcels are either Agricultural/Rural Reserve or Estate Residential to the north. The surrounding uses are single family residential and agricultural. The Comprehensive Plan has it designated as MUCA Rural Transition. Site conditions and slope map here. The petition site is approximately 10 acres. It receives access off of East Schacht Road. It is designated a local road. There are some hydrological features on the property that you can see on the southern portion here in the light blue and the dark blue on the slope map and the site conditions map. There is hardly any 15 percent slope so we don't have to worry about that. Going through some site photos here. This is the driveway cut off of the local road. It is a gravel drive and it comes back through the property to the single family residence with the detached garage. In the bottom right photograph you can see one of the pole barns there in the background. Just some more site photos here of the petition site. Here you can see that pole barn again. Here is the existing deck and proposed location for the in-ground pool. We will see with the petitioner's site plan a more detailed view of where they are proposing to place the in-ground pool. Just more photographs there. Here is the petitioner's letter to the Board of Zoning Appeals describing that they would like to put the in-ground pool on their property and that they understand that they don't meet the minimum lot width for the zoning district. Here we have a submitted site plan that was included with the building permit application that shows their existing deck around and the proposed location for the in-ground pool structure. Overall, Planning Staff recommends approval of the design standards variance to Chapter 804 for

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Minimum Lot Width, based on the findings of fact and subject to the Monroe County Highway and Drainage Engineer reports. I will now take any questions.

RECOMMENDED MOTIONS

Approve the design standards variance to Chapter 804 for Minimum Lot Width based on the findings of fact and subject to the Monroe County Highway and Drainage Engineer Reports.

FINDINGS OF FACT: Minimum Lot Width

812-6 Standards for Design Standards Variance Approval: In order to approve an application for a design standards variance, the Board must find that:

(A) The approval, including any conditions or commitments deemed appropriate, will not be injurious to the public health, safety, and general welfare of the community, because:

(1) It would not impair the stability of a natural or scenic area;

Findings:

- Approval of the variance would allow the petitioner to develop this pre-existing nonconforming lot of record;
- The site contains an existing single-family residence with a detached garage, an approximately 624 sq. ft. pole barn, and an approximately 1,500 sq. ft. older pole barn.
- The area is not located within the floodplain or the Environmental Constraints Overlay area;
- Conclusion: It would not impair the stability of a natural or scenic area.

(2) It would not interfere with or make more dangerous, difficult, or costly, the use, installation, or maintenance of existing or planned transportation and utility facilities;

Findings:

- E Schacht Road is a local road maintained by the County Highway Department;
- The installation of the in-ground pool will not interfere with the existing septic system on the petition site;
- Conclusion: It would not interfere with or make more dangerous, difficult, or costly, the use, installation, or maintenance of existing or planned transportation and utility facilities;

(3) The character of the property included in the variance would not be altered in a manner that substantially departs from the characteristics sought to be achieved and maintained within the relevant zoning district. That is, the approval, singularly or in concert with other approvals - sought or granted, would not result in a development profile (height, bulk, density, and area) associated with a more intense zoning district and, thus, effectively re-zone the property; and,

Findings:

- See Findings under Section A(1) and A(2);

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- The zoning of the surrounding adjacent properties is Agriculture/Rural Reserve (AG/RR);
- There are more than five (5) AG/RR zoned lots in the area that are not in compliance with lot width;
- Conclusion: The character of the property included in the variance would not be altered in a manner that substantially departs from the characteristics sought to be achieved and maintained within the relevant zoning district;

(4) It would adequately address any other significant public health, safety, and welfare concerns raised during the hearing on the requested variance;

Findings:

- The Board of Zoning Appeals may request the petitioner to address any other significant public health, safety, and welfare concerns raised during the hearing;

(B) The approval, including any conditions or commitments deemed appropriate, would not affect the use and value of the area adjacent to the property included in the variance in a substantially adverse manner, because:

(1) The specific purposes of the design standard sought to be varied would be satisfied;

Findings:

- See Findings under Section A(1);
- Any proposed structure on this lot requiring a building permit would need a minimum lot width variance;
- Conclusion: Approval of the variance would satisfy the design standard sought to be varied.

(2) It would not promote conditions (on-site or off-site) detrimental to the use and enjoyment of other properties in the area (e.g., the ponding of water, the interference with a sewage disposal system, easement, storm water facility, or natural watercourse, etc.); and,

Findings:

- See Findings under Section A(1);
- The proposed location of the in-ground pool will not interfere with existing septic system;
- There is no FEMA floodplain on the site;
- There are no visible karst features on the site;
- Conclusion: It would not promote conditions detrimental to the use and enjoyment of other properties in the area.

(3) It would adequately address any other significant property use and value concerns raised during the hearing on the requested variance; and,

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Findings:

- The Board of Zoning Appeals may request the petitioner to address any other significant property use and value concerns raised during the hearing on the requested variance;

(C) **The approval, including any conditions or commitments deemed appropriate, is the minimum variance necessary to eliminate practical difficulties in the use of the property, which would otherwise result from a strict application of the terms of the Zoning Ordinance.**

Findings:

- There is a hardship in that the property owner cannot do any new development to this pre-existing nonconforming lot of record without first receiving a lot width variance, or seeking a rezone. The lot was in existence prior to the 1997 zoning ordinance and therefore was made nonconforming by the ordinance.

QUESTIONS FOR STAFF – 2008-VAR-48 - Sparks

Kaczmarczyk: Anyone have any questions for Drew?

Sorensen: I do.

Kaczmarczyk: Go ahead.

Sorensen: Drew, just to make sure that it is in record, in the summary you stated the site does meet the minimum but you are saying it does not meet the minimum.

Myers: Yes, that is correct, it does not. I left off the little nt there. It should say does not meet the minimum width.

Sorensen: Thank you.

Myers: Thank you. I apologize for that.

Kaczmarczyk: Is the petitioner here?

PETITIONER/PETITIONER'S REPRESENTATIVE – 2008-VAR-48 – Sparks

Sparks: Yes, I am here. Tim Sparks.

Kaczmarczyk: Would you like to speak?

Sparks: Sure.

Kaczmarczyk: Do you swear to tell the truth and nothing but the truth?

Sparks: I do, yes.

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Kaczmarczyk: Ok, you may proceed.

Sparks: Ok. My wife and I have 3 kids and they are through school, they are half way married and we have got what 3 grandkids and 2 more on the way. In lieu of traveling and covid we decided to put a pool in the backyard so everyone can come and visit grandma and grandpa now. We decided to put that in the yard. We called Rich Grimes and that is when he told us that the lot width was about 10 feet too narrow so we had to submit a variance. This is all new territory for me so whatever questions you have for me I will be happy to answer and the plastic pool in the backyard is for sale.

Kaczmarczyk: Does anybody have any questions for the petitioner? Seeing none. Is there anyone else here who wishes to speak on behalf of this petition? Seeing none. Does anybody wish to speak against this petition?

Sparks: Please say no.

Kaczmarczyk: I am not seeing anybody.

Nester Jelen: I am not seeing anyone, Mary Beth.

Kaczmarczyk: Alright. We will entertain a motion.

SUPPORTERS – 2008-VAR-48 – Sparks: None

FURTHER SUPPORTERS – 2008-VAR-48 – Sparks: None

REMONSTRATORS - 2008-VAR-48 – Sparks: None

ADDITIONAL QUESTIONS FOR STAFF – 2008-VAR-48 – Sparks: None

FURTHER QUESTIONS FOR STAFF – 2008-VAR-48 - Sparks

Guerrettaz: **In matter of case number 2008-VAR-48, request is a design standards variance from Chapter 804, Minimum Lot Width at 2402 East Schacht Road, I move that we approve the variance, based on the findings of fact, subject to the staff report and the recommendations found therein.**

Kaczmarczyk: I will **second** that motion. Want to call the roll, please Larry?

Wilson: Yes. The vote is on petition 2008-VAR-48, Minimum Lot Width for 2402 East Schacht Road, Sparks Minimum Lot Width Variance. Again, a vote in favor is a vote to approve the variance based upon the findings and with the conditions in the staff report. Bernie Guerrettaz?

Guerrettaz: Yes.

Wilson: William Hosea?

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Hosea: Yes.

Wilson: Mary Beth Kaczmarczyk?

Kaczmarczyk: Yes.

Wilson: Vicky Sorensen?

Sorensen: Yes.

Wilson: Margaret Clements?

Clements: Yes.

Wilson: The variance is granted 5 to 0.

The motion in case 2008-VAR-48, Sparks Minimum Lot Width Variance from Chapter 804, in favor of approving the variance, carried unanimously (5-0).

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NEW BUSINESS

- 9. 2008-CDU-03** **Beaumont House Historic Adaptive Reuse Conditional Use, Chptr 813**
10. 2008-VAR-49 **Beaumont House Parking Lot Surfacing Variance from Chapter 806**
One (1) 3.40 +/- acre parcel in Richland Township, Section 32 at 9030 W
State Road 48. **Zoned AG/RR/HP Overlay.**

BOARD ACTION: Kaczmarczyk introduced the petition.

STAFF ACTION:

Behrman: This is the Beaumont House Historic Adaptive Reuse Conditional Use request and also a Parking Lot Surfacing Variance request from Chapter 806. I also did a summary and background. The request is for a Conditional Use of Historic Adaptive Reuse and it is an intensification of an existing one. They would like to add essentially and Ag Event Center - medium sized use to an existing Hotel Use that is on the lot that was previously granted in 2018 by the BZA. The increased use would require more parking spaces and so that is why they are requesting a variance from the surfacing requirement. The purpose is that the petitioner would like to host events on the property. Currently they are only allowed to have 12 people associated with the hotel use and they would like to have up to 150 guests on the site with events averaging about 2 a week, so maybe up to 100 in a calendar year. I would like to say that if this is approved, they would still have more hurdles to kind of get through. There would be a Site Plan Amendment that would need to be filed with Planning and then also the Historic Preservation Board of Review would have a little bit of say in the design of the parking lot and landscaping through the Certificate of Appropriateness process. This is located at 9030 West State Road 48, which is in Richland Township, Section 32. It is currently zoned Agricultural/Rural Reserve and I will say that it is 3.42 acres in size. They do meet the minimum lot size area but this is far smaller than what we normally see for an Ag Event Center that comes online. We have the Farm and Forest as the Comp. Plan designation. With regard to site plan you are going to see some floodplain along the roadway there. The best available Floodplain Map does show Floodway and Floodway Fringe that encroaches into the property. We did some remediation with home already to make sure that its first floor elevation meets regulations through DNR and FEMA. But the parking lot it is possible that the way that they design it we are going to have watch and be careful that they are not going to design it in the floodplain area. The bottom picture there is showing where the site in relation to other homes that are out in the area. One of them is to the west 0.34 miles away and the other one is about 0.25 miles away. There is a small church about 0.25 miles away as well. It is pretty sparse. We have got another commercial business to the north and east as well. I wanted to familiarize you with the site itself and maybe go through a small bit of history of what has occurred on the site. We had the rezone occur in 2017 to add the Historic Preservation Overlay to the site, which activates this Historic Adaptive Reuse Conditional Use and they did get the Hotel Use approved for what is the little blue star and associated with that is the yellow septic system. I am going to keep pointing out the septic systems here because it is important in how we think about this lot and how much is going on here. To the far west they actually have a couple of goats on the site that are kind of more like pets I would say and a little shed associated with it. In green they added an 800 square foot shelter house. They actually just got an after-the-fact permit for that. The other blue star is a historic structure. It is a root cellar and it is really neat. The other green square on the far right, eastside of the property, this is a chapel that is on site that holds occupancy of 125 people. They did go through the Historic Preservation Board and obtained a Certificate of Appropriateness for this design. When it was

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getting permitted we did make it clear that this was only going to be for the use of the 12 people allowed in the hotel at a time. They also have proposed on a site plan and approved with a Certificate of Appropriateness barn, which there is a small diagram of it in the far right picture of the slide there and it is the red square. Explaining the yellow septic system is there again. They have half of it put in associated with the chapel. If they are ever going to build the proposed barn that other half has to be put in first and they did include on this a good chunk of the additional parking that may be required. We are still working on the parking minimum for this lot. We wanted to wait for Larry to be back in town to really make a hard call on how many spaces are required for this use, since it is a Historic Adaptive Reuse. Again, all the slopes are less than 15 percent and the whole property is really surrounded by a nature preserve owned by the Sycamore Land Trust and so there is not a lot of neighbors. In fact the site maintains a little bit of frontage right along the part where the trail hits and when I hiked that trail I actually could see the petition site and see the old Beaumont House there. These are some of the slides. You have got the Beaumont House restored and at the bottom there is one in its older condition that I threw in there for the fun of it. The 800 square foot shelter house is in the upper right and you can kind of see that root cellar as well. Here is a discussion that I would like to bring up is the driveway. When this petition came in one of the first things I did was request that they get a commercial driveway permit of sorts or approval of that through INDOT. This is a state highway and the speed limit out here is 55 mile an hour. I can tell you if I didn't get the letter from INDOT, which was in the packet and I included it at the end of this presentation, I probably would not be supporting this as much. They will be required to put in a commercial driveway, get a work within the right of way permit and build to those standards if they get this use approved. These are just kind of looking both to the west and east. When you look to the west, which is that upper right corner, it does have kind of, each side had a curve. Those cars come around fast. People will need to be careful when entering and exiting the site and hopefully an improved driveway will assist with that. The upper left is just the Beaumont House and root cellar again. The center picture is the corner of the Beaumont House and showing the existing gravel drive, which was allowed to be a gravel drive because of the size at the time. But now that they are asking for a larger parking lot, which would extend farther back toward those trees they would probably have to remove some of those trees, a considerable amount of those trees, actually. Then they would be required to pave it under Chapter 806 standards. The upper right picture was just some of the area where that parking lot will possibly go and showing that they will have to probably remove a fair amount of those trees to get all of the parking to fit. These are just some of the aerial views of the site. The lot lines are a little skewed here but we have confirmed with site plans that every structure does so far meet the setback requirements. This was just a case history that we did. We started getting inquiries on the site from potential buyers of the site, which called into attention that this does not have a Land Use Certificate yet. They need to still finish a few improvements before we would issue a Land Use Certificate and we were trying to get to the point of compliance, filling in the gaps here of what is still required and this conditional use increase I think is going to assist the property in being remarkable and putting that larger chapel to use. They already have that barn location approved as well. It is almost like we are doing this backwards a little bit. They got certain approvals prior to getting this increased intensification of that property approved first. The petitioner's letters are in the packet where they describe how they want to increase the property with those 150 guests and doing possibly a 100 events a year. The second letter on right is requesting the variance from the surface requirement. They had a picture enclosed with that shows a granite, they call it decomposed granite. This is actually something that the Historic Preservation Board if this use is approved they would be making some of the decisions

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on the way that this would look, the parking lot configuration and the materials that they would use for it. The left letter is the Indiana Department of Transportation letter, the INDOT letter that I found crucial for this site. We also have the Health Department stating that if they want to put the barn on the property they still have a little bit more septic system to put in first. But we do have those site identified and located on the site plan so we know they will fit and that also helps us with how parking would be configured going forward. I just put the site plan back in here to just kind of envision this parking lot and the amount of increased space that would go along with it and you can see some of those trees that are there kind of in circles that would have to be removed. This did go to the Historic Preservation Board on August 18th. They did kind of a preliminary review on this. That is where we really did confirm that the Certificate of Appropriateness would be required and they did express some concerns about maybe the intensification of the use might take away the historic character of the lot itself and overtax it with improvements. But they also did approve the chapel and the barn already through their processes. Like I said, we are kind of doing this a little backwards. I did have one person that lived out there call in with a concern. She was concerned about the number of people that would be allowed on the site and the possibility of the alcohol consumption that goes along with it and concerned about the guests that would be driving on the roads out there. So, I wanted to throw this in there as it came in before the staff packet could go, or it came in after the staff packet was published. With that, it was hard to come to these two conclusions. Staff recommends approval for the Conditional Use request for Historic Adaptive Reuse, based on the findings of fact. Staff also recommends approval for the design standards variance for the Parking Lot Surfacing requirement request, based on the findings of fact. Staff did do some comparisons with the closest use which was that medium Ag Event Center. It does not really line up. Medium sized Ag Event Center requires 20 acres. This is only 3.4. A lot of the setbacks weren't quite met. You are only to have about 40 events a year and they are asking for 100. But again this is kind of a special use in that this is Historic Adaptive Reuse. They don't have to pigeon hole themselves into just one specific use. Right now they are doing 2 uses essentially. One is the hotel with the Beaumont House that has been restored and it is beautiful and then they are asking for this whole second use to do Ag Event Center on the site, well, we are calling it and Ag Event Center. But in combination this whole thing is Historic Adaptive Reuse. Does anyone have any questions?

RECOMMENDED MOTION

Staff recommends **approval** for the conditional use request for Historic Adaptive Reuse based on the findings of fact.

Staff recommends **approval** for the design standards variance for the parking lot surfacing requirement request based on the findings of fact.

FINDINGS OF FACT: Conditional Use, Chapter 813

In order to approve a conditional use, the Board must have findings pursuant to Chapter 813-5 Standards for Approval. The Board must find that:

- (A) **The requested conditional use is one of the conditional uses listed in Chapter 813-8 (for the traditional County planning jurisdiction) or Table 33-3 (for the former Fringe) for the zoning district in which the subject property is located. In addition to the other relevant standards imposed by or pursuant to this chapter, the standards,**

uses and conditions set forth in Section 813-8 are hereby incorporated as standards, uses and conditions of this chapter;

Findings:

- The proposed use is listed as “Historic Adaptive Reuse” in the Use Table in Chapter 802 of the Monroe County Zoning Ordinance;
- Two conditions are attached to the proposed use in Chapter 802, Conditions 15 and 44;
- Condition 15 reads, “The Plan Commission may attach additional conditions to its approval in order to prevent injurious or obnoxious dust, fumes, gases, noises, odors, refuse matter, smoke, vibrations, water-carried waste or other objectionable conditions and to protect and preserve the character of the surrounding neighborhood.”;
- Condition 44 reads, “Subject to the procedure described in Chapter 813 of the Monroe County Zoning Ordinance”;
- The petition property is zoned Agriculture/Rural Reserve (AG/RR);

(B) All conditions, regulations and development standards required in the Zoning Ordinance shall be satisfied;

Findings:

- The petitioner is requesting approval to be able to use the existing historic house as a bed and breakfast/hotel and an event center;
- The house was used as a single family residence in the past;
- The event center will allow up to 150 guest with up to 100 events as stated in the petitioner’s letter;
- Further development on the site is required to meet Height, Bulk, Area, and Density requirements for the (AG/RR) Zoning District, in addition to other ordinance specifications;
- A site plan amendment would be required to review all site improvements;
- A Certificate of Appropriateness must be issued for the design of site improvements;

(C) Granting the conditional use shall not conflict with the general purposes of the Zoning Ordinance or with the goals and objectives the Comprehensive Plan;

Findings:

- The zoning ordinance allows for Historic Adaptive Reuse as a conditional use in the (AG/RR) zone;
- The Comprehensive Plan designates the site as Farm and Forest;
- The description of the Comprehensive Plan’s Farm and Forest designation is provided in this report;
- The Agricultural/Rural Reserve (AG/RR) Zoning District has a 2.5 minimum lot size requirement;
- The petition site is 3.40 acres;

(D) The conditional use property can be served with adequate utilities, access streets, drainage and other necessary facilities;

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Findings:

- The conditional use property can be served with adequate facilities;

(E) The conditional use shall not involve any element or cause any condition that may be dangerous, injurious or noxious to any other property or persons, and shall comply with performance standards delineated in this ordinance;

Findings:

- The petitioners will be required to comply with the Performance Standards set forth in Chapter 802-4 of the Monroe County Zoning Ordinance;
- The proposed use will not have an adverse impact on traffic conditions in the area;

(F) The conditional use shall be situated, oriented and landscaped (including buffering) to produce a harmonious relationship of buildings and grounds with adjacent structures, property and uses;

Findings:

- Approval of the conditional use will not produce a conflicting relationship between the petition site and its surrounding area;
- The petition site is naturally screened in most places;
- The petition site will be required to buffer areas where there is not adequate screening between its adjoining lots through site plan review;

(G) The conditional use shall produce a total visual impression and environment which is consistent with the environment of the neighborhood;

Findings:

- The area surrounding the petition site is forested and is a Sycamore Land Trust conservancy area;
- The site has adjoining agricultural uses;
- The nearest residences are 0.25 miles and 0.34 miles away from the petition site;

(H) The conditional use shall organize vehicular access and parking to minimize traffic congestion in the neighborhood; and,

Findings:

- The petition site will be accessed off of W State Road 48;
- The current driveway would need to be upgraded to a commercial driveway;
- INDOT has provided a letter stating if an application is submitted a permit could be issued;
- The speed limit on W State road 48 is 55 mph along this length of road adjacent to the petition site;

(I) All permits required by other Federal, State and local agencies have been obtained;

Findings:

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- Further development on the site is required to meet Height, Bulk, Area, and Density requirements for the (AG/RR) Zoning District, in addition to other ordinance specifications and will be approved during a site plan amendment petition;
- INDOT will require a commercial driveway permit and Right of Way permit per their letter (Exhibit 3);
- The Health Department will need to inspect other half of septic system prior to barn construction;
- Non-residential Commercial permit will be required for the barn construction;
- The Historic Preservation Board of Review must approve the parking lot design and issue a Certificate of Appropriateness;
- Grading permit required from planning for the construction of the parking lot;

All conditional uses are subject to the criteria established in Section 813-5. Additional criteria as specified in this section must be met by the following categories of conditional use.

Historic Adaptive Reuse:

- (1) Property shall have been designated or have filed a petition for Historic designation at the time of the application for a conditional use permit;**

Findings:

- The Monroe County Commissioners approved local historic designation for the petition site on December 13, 2017 (Ordinance No. 2017-49);

- (2) Proposed use shall not diminish the historic character of the property or, if it is located within an historic district, the historic character of said district;**

Findings:

- Historic Adaptive Reuse approval per the petitioner's submitted request will not diminish the historic character of the property if the parking lot is landscaped appropriately and designed to blend with the property;
- The HP Board of review issued Certificate of Appropriateness for three new structures on the site to be use for the Ag Event Center use;

- (3) Proposed use shall enhance the ability to restore and/or preserve the property;**

Findings:

- The proposed use will enhance the ability to preserve the property and reuse its designated historic structures on site;
- Allowing larger amounts of guests will expose them to the historic property that has been restored under the supervision of both the Historic Preservation Board of Review and special covenants;

- (4) The granting of the conditional use permit shall be contingent upon any required**

Certificate of Appropriateness and upon the granting of Historic designation;

Findings:

- Historic designation has been granted for the petition site, meaning all external changes to the buildings will require Certificate of Appropriateness.
- The petitioner has obtained three Certificate of Appropriateness for three of the structures and one proposed structure;

FINDINGS OF FACT: 1609-VAR-76 Surfacing Requirement Variance to Chapter 806

812-6 Standards for Design Standards Variance Approval: In order to approve an application for a design standards variance, the Board must find that:

- (A) The approval, including any conditions or commitments deemed appropriate, will not be injurious to the public health, safety, and general welfare of the community, because:**

(1) It would not impair the stability of a natural or scenic area;

Findings:

- Approval of the variance would allow the petitioner to install a soft surface parking lot (decomposed granite) consisting of at least 60 parking spaces (total proposed spaces is 68, with at least 2 being paved) and its associated driveway and aisles on the 3.42 +/- acre petition site. This is in place of the standard hard surface paving requirement per Chapter 806 of the Monroe County Zoning Ordinance;
- The total area of the proposed parking aisles, parking spaces, and associated driveway in question pertaining to the surfacing requirement is estimated at over 15,000 square feet (see site plan draft Exhibit 2);
- The variance would waive the design standard requiring paved aisles, driveways, and parking spaces as required by Chapter 806;
- The proposed development will be constructed on a part of the property that is wooded and would require the removal of mature trees;
- According to the petitioner letter the driveway and parking spaces can be utilized by guests at a maximum of 100 times annually;
- The proposed development meets required setbacks;
- The Drainage Engineer can impose specific design requirements during formal site plan review, which is required after conditional use approval and prior to the event center being occupied;
- According to the Drainage Engineer, the runoff coefficient for aggregate stone is approximately 0.8, whereas the runoff coefficient for asphalt is roughly 0.82;
- The petitioner submitted findings, including the following:
 - Proposed decomposed granite material ‘*will better suit the historic site and blend better with the surrounding environment to keep a cohesive feel;*’
- The decomposed granite surface proposed by the petitioner is intended to be brown color that should lessen the visual impact of the parking area;
- The Beaumont house was built in 1890 and was restored in 2019 by the petitioner;
- The site is protected under the Historic Preservation Overlay;

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- The petition site is adjacent to a 188 acre nature preserve with trails running adjacent to the property;
- The Monroe County Historic Preservation Board of Review will review a Certificate of Appropriateness for the specific design and surface of the parking area;”
- Part of the petition site is within a special flood hazard area;
- Floodplain Chapter 808-5(A)(10) states, “Parking lots, driveways, and sidewalks within the SFHA shall be constructed with permeable materials.”
- Conclusion: It would not impair the stability of a natural or scenic area;

(2) It would not interfere with or make more dangerous, difficult, or costly, the use, installation, or maintenance of existing or planned transportation and utility facilities;

Findings:

- See Findings A(1);
- The site gains access from W State Road 48, an major collector with a 55 mph speed limit;
- The adjoining lot is a 188 acre forested property owned by Sycamore Land Trust;
- The site has approved septic locations already delineated on site;
- The proposed development has no foreseeable negative impact on planned transportation facilities or utilities;
- Electric utilities are underground on the petition site;
- Conclusion: It would not interfere with or make more dangerous, difficult, or costly, the use, installation, or maintenance of existing or planned transportation and utility facilities;

(3) The character of the property included in the variance would not be altered in a manner that substantially departs from the characteristics sought to be achieved and maintained within the relevant zoning district. That is, the approval, singularly or in concert with other approvals - sought or granted, would not result in a development profile (height, bulk, density, and area) associated with a more intense zoning district and, thus, effectively re-zone the property; and,

Findings:

- See Findings A(1) and A(2);
- The development site is zoned Agriculture/Rural Reserve (AG/RR);
- Surrounding properties are zoned Agriculture/Rural Reserve (AG/RR);
- The site has local protection under the Historic Preservation Overlay with regards to certain structures and oversight on proposed improvements;
- A conditional use request is part of this petition;
- If the variance request is approved, the petitioner will still be required to obtain site plan approval and meet development standards including Height, Bulk, Area and Density requirements for the AG/RR Zoning District;
- Conclusion: The character of the property included in the variance would not be altered in a manner that substantially departs from the characteristics sought to be achieved and maintained within the relevant zoning district;

(4) It would adequately address any other significant public health, safety, and welfare concerns raised during the hearing on the requested variance;

Findings:

- The Board of Zoning Appeals may request the petitioner to address any other significant public health, safety, and welfare concerns raised during the hearing;
- Part of the petition site is within a special flood hazard area;
- Floodplain Chapter 808-5(A)(10) states, “Parking lots, driveways, and sidewalks within the SFHA shall be constructed with permeable materials.”
- The petitioner submitted findings, including the following:
 - *“Parts of the property are in the floodplain. While the proposed parking does not appear to impose on the floodplain area, having a more pervious surface will minimize run off from a less pervious surface.”*

(B) The approval, including any conditions or commitments deemed appropriate, would not affect the use and value of the area adjacent to the property included in the variance in a substantially adverse manner, because:

(1) The specific purposes of the design standard sought to be varied would be satisfied;

Findings:

- Approval of the variance would allow the petitioner to install a soft surface parking lot (decomposed granite) consisting of approximately 68 parking spaces with at least 2 being paved;
- Part of the petition site is within a special flood hazard area;
- Floodplain Chapter 808-5(A)(10) states, “Parking lots, driveways, and sidewalks within the SFHA shall be constructed with permeable materials.”
- The site will meet ADA parking requirements;
- Conclusion: The specific purposes of the design standard sought to be varied would be satisfied;

(2) It would not promote conditions (on-site or off-site) detrimental to the use and enjoyment of other properties in the area (e.g., the ponding of water, the interference with a sewage disposal system, easement, storm water facility, or natural watercourse, etc.); and,

Findings:

- See findings under (A);
- Bio-retention designed for a site is calculated for paved parking lots and may apply to alternate surface lots;
- Conclusion: It would not promote conditions detrimental to the use and enjoyment of other properties in the area;

(3) It would adequately address any other significant property use and value concerns raised during the hearing on the requested variance; and,

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Findings:

- The Board of Zoning Appeals may request the petitioner to address any other significant property use and value concerns raised during the hearing on the requested variance;

(C) **The approval, including any conditions or commitments deemed appropriate, is the minimum variance necessary to eliminate practical difficulties in the use of the property, which would otherwise result from a strict application of the terms of the Zoning Ordinance.**

Findings:

- The petitioner has applied for this variance, which would reduce site plan requirements necessitated by the potential conditional use approval associated with this case;
- The petition site has the Historic Preservation Overlay zoning district associated with it and the Historic Preservation Board of Review has oversight on the appropriateness of improvements through the Certificate of Appropriateness process protecting the historic resource. Granting the variance for the surfacing requirement will allow greater flexibility for the Board of Review when approving the design configuration and surface type;
- Should the parking lot be designed partially in the Floodplain then Chapter 808-5(A)(10) states, "Parking lots, driveways, and sidewalks within the SFHA shall be constructed with permeable materials."
- Conclusion: There does appear to be practical difficulties in the use of the property as defined in Chapter 801;

All variance approvals shall be considered to be conditional approvals. The Board shall have the authority to impose specific conditions as part of its approval in order to protect the public health, and for reasons of safety, comfort and convenience (e.g., to insure compatibility with surroundings). Variance approval applies to the subject property and may be transferred with ownership of the subject property subject to the provisions and conditions prescribed by or made pursuant to the Zoning Ordinance.

QUESTIONS FOR STAFF – 2008-CDU-03 & 2008-VAR-49 – Beaumont House

Kaczmarczyk: Any questions for Tammy?

Wilson: Tammy, how many parking lot spaces are you showing right now for this?

Behrman: There is about 12 existing and they are showing, oh my gosh, what is 27 times 2? It is probably in the report and I can't remember.

Nester Jelen: 27 times 2, right?

Behrman: Yes, thank you.

Guerrettaz: 54.

Behrman: 54 plus the 12. I think at one point Larry, we were saying they needed 68 and this was

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66. We were saying at one time 68 but they disputing a little bit that they don't need that many. We are also looking at which standard are we supposed to be using. Should we be using the Hotel or the Ag Event Center? I think if and when they submit for Site Plan Review, that Site Plan Amendment that is required, we will have to hard line make that decision on how many spaces are required. We could do that here as a condition of approval and that can be a good decision point with what the petitioner thinks they need to have versus what we think is a safe thing to have if you are going to be allow 150 people on this site. On Ag Event Center requires 2.5 spaces, I am sorry, 1 space per 2.5 people. That would account for I believe the, I guess I did not bone up on my math before this presentation, I am sorry. But we were adding the hotel's required spaces, which is 8, plus all of those other that are coming in under the 150. This is pretty close to the grand total. This is what we are really going to go with.

Wilson: I guess the question I have is how is like a 65 car parking lot consistent with a 3 acre historic home site? I am just confused here.

Behrman: The first design that they put in here, it was all shoved over next to the home and after going to the Historic Preservation Board, they were like maybe break it up into smaller lots. Well, that is kind of difficult with the septic systems that are there and such, so they did make that other drive to kind of push the bulk of the parking lot farther from the historic structure. They are going to use that decomposed granite, which is a softer brown like rust color, more like dirt, not like that more bright white limestone kind of coloring and there are some trees that are existing along the street there and they would be required to do a full perimeter parking landscaping and islands. So, the landscaping would soften that and by pushing toward the east side of the property here it pulls it away from the historic structure itself. This is for the petitioners to really perhaps explain more and this is not a final design because the Historic Preservation Board will be overseeing this as well.

Clements: Tammy, in your discussions and investigations since this property is so surrounded by Sycamore Land Trust have you spoken with them?

Behrman: We sent them the notice letter and we did not get a response. I do know that the petitioners do a little upkeep right along their property line with regards to the trail maintenance and such. You can probably speak to them and maybe and find out if they have spoken with Sycamore but I did not get any response from them at this time.

Clements: I would just like to state up front that a couple of the issues that have been raised, which is the size of the proposed event center on this small property seems to be kind of freeloading off of another stellar community enterprise, which is the Sycamore Land Trust and I would think that the Sycamore Land Trust as stakeholders should be consulted. Because there seems to be competing values that they probably think are protected under the zoning. I think that is a vital stakeholder that needs to be included in this discussion.

Behrman: They were sent the letter and they chose to not respond to it.

Kaczmarczyk: Any more questions for staff? Go ahead, Bernie.

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Guerrettaz: First off, the request is only for the surface conditions of the parking, is that correct?

Behrman: It is a Conditional Use request to have the medium sized Ag Event Center added to the existing Hotel use and if that use is approved then it requires more parking, so they are then asking for the Surfacing Variance.

Guerrettaz: So, whether it is 66 or its 69, right now they are not asking for a reduction of parking spaces so that is not something that we are going to consider this evening.

Behrman: We haven't come up with a hard number. Jackie and I were working on this and I think that when the site plan really comes in we will get Larry to weigh in on this. He was out of the office for a few weeks there when we were trying to make some decisions and like I said, we can try to come up with the appropriate number of parking spaces right now with this petition.

Guerrettaz: But we are only talking the difference of 2 spaces or 3 spaces different.

Behrman: Well, when you use the Hotel standard there was another standard I looked at, I think it was 45 or 46 was required. Again, this is a unique Historic Adaptive Reuse.

Guerrettaz: They are showing 66 now. Correct?

Behrman: Yes, that sounds right.

Guerrettaz: And the math that we came up with earlier was, they are already saying they are putting 66 in. All that I am trying to get at is I don't think this is where we need to worry about parking spaces and the number count because they did not ask for that variance and that is going to be something that they are going to have to work through with site plan approval, would be my assumption.

Behrman: Yes, I think so.

Guerrettaz: Ok. That is what I wanted to clarify and I just want to add that the historic nature of some of these properties is, I have just got to imagine that it is very expensive and very complicated for an upkeep and I think that an enterprise such as this is important to sustain the level of maintenance and care and it may require them to be put in this classification and it has got to generate money to support it. I think we went through this same discussion with the property over on Church Lane, it may not have been that one, we have had this discussion before where these enterprises are as important as a support system for the sustainability of the property. That is just my take on the petition overall. That is all that I have got.

Kaczmarczyk: Any further questions for staff?

Sorensen: I have a question. Tammy, on page 106 on the findings toward the end it says if the variance request is approved the petitioner will still be required to obtain site plan approval. What does that mean?

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Behrman: If they are approved they will have to a use, it is like a change of use site plan and that is where we will re-evaluate this site and make sure they have the appropriate amount of parking, that stormwater runoff from that parking lot is dealt with according to our standards, that the driveway is reviewed properly and in this case they will actually have to produce that INDOT permit, not just a letter but the actual permit with the bonding and the right of way information to work within the right of way and we just make sure that the landscaping, Chapter 830 standards are met with regards to the perimeter parking; for every 35 feet around that parking lot they are required to have 1 tree, 10 shrubs and 10 additional plants or shrubs, each of those little parking islands has to go 15 spaces there has to be a 160 foot parking island with a tree, 10 plants, 10 shrubs in it as well. We make sure that we are not making the parking lot the focal point and it does kind of get a little bit hidden behind that.

Sorensen: So, our approval tonight would be that they could then move forward on everything?

Behrman: Yes.

Sorensen: Thank you.

Kaczmarczyk: Any more questions for staff? Seeing none. Is the petitioner here and would they like to speak?

Nester Jelen: I do see the petitioner. Let me unmute them.

PETITIONER/PETITIONER'S REPRESENTATIVE – 2008-CDU-03 & 2008-VAR-49 – Beaumont House

Cardwell: We are here.

Kaczmarczyk: Would you like to speak this evening?

Cardwell: Yes.

Kaczmarczyk: Do you swear to tell the truth and nothing but the truth?

Cardwell: Yes.

Kaczmarczyk: Thank you.

Cardwell: I was just listening to all of the comments and all of the explanation that Tammy has presented to you guys tonight and part of the reason we are wanting to do this absolutely for additional income. One of the hurdles that I guess we didn't realize originally was that even if we are having a very small event, say a family reunion or a birthday party or a celebration of life, we have people that are staying here at the bed and breakfast but they are technically not allowed to bring even 10 guests. We may have a birthday party with 20 people but right now that does not meet the requirement as to what we are supposed to have. While we are asking for up to 150 guests, our guestimate is that would not be the norm. We have had businesses in town want to have

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corporate retreats here where they are bringing speakers in to stay at the bed and breakfast and bringing employees over from their local businesses to have a corporate retreat up here so that they are getting out of the office and have a day away but getting valuable information using our facility. Things of that nature so it is not just about having weddings. It is about being a place that could compliment additional people coming in to our community and bringing some more commerce. Those are the things that we are wanting to do. Everything that we have done here on the property we have done with the original structure, the hotel part in mind. We have tried to keep everything as far away from that as possible. I don't know that Tammy showed a picture but the actual chapel is behind an entire buffer of trees and growth. It is very hidden from even the road. I don't know that she has a picture of that and everything that we are trying to do is to keep everything buffered so that the house is still the show stopper and it is still the part that we want everybody to pay attention to. In getting this house, it is very expensive and it just helps us to have that additional income to keep it and maintain it and share it with the public. Sycamore Land Trust, someone brought that up. Sycamore Land Trust actually did phone me and they are in support of this. They absolutely. We mowed the entire trail that is mowable. We mow that and maintain that for them and we have a great partnership with Sycamore Land Trust.

Kaczmarczyk: Thank you, Michelle. Does anybody have any questions for the petitioner? No questions for the petitioner, ok. Thank you. Is there anybody else here who would like to speak on behalf of this petition? Not seeing any. Would anybody like to speak against this petition? Not seeing anyone. Are we ready to make a motion, anybody?

SUPPORTERS – 2008-CDU-03 & 2008-VAR-49 – Beaumont House: None

FURTHER SUPPORTERS – 2008-CDU-03 & 2008-VAR-49 – Beaumont House: None

REMONSTRATORS - 2008-CDU-03 & 2008-VAR-49 – Beaumont House: None

**ADDITIONAL QUESTIONS FOR STAFF –
2008-CDU-03 & 2008-VAR-49 – Beaumont House**

Clements: I would just like to make a statement that first of all I think that the description of what the property owners are trying to accomplish is really unique and the manner in which they are doing it is beautiful and it is an asset to our community and they have talked to Sycamore Land Trust, which is a stakeholder, is important to me. So, I am impressed with, my reservations have been allayed and I just wanted to share that. Thank you.

Kaczmarczyk: Thank you Margaret. Anybody wish to make a motion?

Wilson: I was not here, I took vacation and I was not here for this report. I just want to express my concern in regard to calling this an Ag Event Center. We spent a lot of time drafting the ordinance for Ag Event Centers. We have put in development standards that were very important by ordinance and it was in response to a lot of problems we had with event centers that were on small pieces of property that maybe did not have good entries in and out or are in an unsafe location. I don't have any problem with what they described of like adding to their original conditional use of a hotel to allow additional events to occur but I have a real concern with individuals who have

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tried to do an ag event center and have been unable to even apply for it because they didn't have 10 acres or 20 acres that is necessary to do it or couldn't meet the other requirements. I think it really creates an unfair advantage to call this an event center. Again, I apologize for not being around when the report was drafted but just because there is a historic structure on the site, we have ag event centers that have historic barns on the site and they had the acreage and met all of the standards to comply with our ordinance for an ag event center. Again, this is a highly competitive enterprise and I just feel that it is very unfair to allow a 3 acre site to come in and not meet the development standards that were set forth in the ordinance requirements for ag event center merely because it has a historic structure on the site. That being said I think there is definitely options here to amend the existing conditional use to allow additional operations that were not originally set forth in the hotel use that might be compatible with size of the site, the historic nature of the site and the concerns of the Historic Preservation Board. I don't try to inject myself into these cases except in this case we spent a lot of time on the ag event center ordinance and the idea that you can get just around all of those provisions concerns me. That is my statement and I trust the BZA to do what they want to do.

FURTHER QUESTIONS FOR STAFF – 2008-CDU-03 & 2008-VAR-49 – Beaumont House

Guerrettaz: I can make and motion and I would just maybe counter on some of you points Larry and I have been around through the discussions on the event centers that you are referring to and I think that there are a lot of attributes with this property, not just the size but the location on the state road, they have got the permitting from INDOT, Mary's Children is close by. There is not a high density of residential in the fact that the owners of the adjacent properties have been notified and they have been given an opportunity. We have seen with the events centers that we haven't had any lack of interest from people that don't like them and I think the staff report is in front of us and I think it is done a good job. Actually Tammy did a nice job explaining some of the ups and downs that she went through in determining her recommendations for approval. I am going to go ahead a make a motion on this based on the staff report we have in front of us. **In case number 2008-CDU-03 and 2008-VAR-49, this is a Conditional Use Request to Chapter 813 Historic Adaptive Reuse, Paving Requirements design standards variance to Chapter 806 at 9030 West State Road 48, I move approval for the petition based on the findings of fact of both requests, based on the staff report recommendations and the findings found in the report as we have been provided.**

Kaczmarczyk: I will **second** the motion. Larry, will you call the roll, please?

Wilson: Sure will. I am going to do these in 2 separate votes since one is a conditional use and one is a variance and they are really separate animals. The motion is to approve the Conditional Use, 2008-CDU-03, based upon the findings with the development standards conditions in the staff report. A vote in favor is a vote to approve the Conditional Use. Vicky Sorensen?

Sorensen: Yes.

Wilson: Margaret Clements?

Clements: Actually, I know it is a little fickle but in the interest of fairness and in the interest of

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all of the other people that have applied for and been denied the request to pursue facilities like this because they did not meet all of the conditions of the Agricultural Event Center criteria, I am going to vote no on this.

Wilson: Bernie Guerrettaz?

Guerrettaz: Yes.

Wilson: William Hosea?

Hosea: Yes.

Wilson: Mary Beth Kaczmarczyk?

Kaczmarczyk: Yes.

Wilson: The Conditional Use is approved 4 to 1.

The motion in case 2008-CDU-03, Beaumont House Historic Adaptive Reuse Conditional Use, Chapter 813 carried (4-1).

Wilson: I will now take roll on the variance from development standards in regard to paving, variance 2008-VAR-49. A yes vote is a vote to approve based upon the findings and with the conditions in the staff report. Margaret Clements?

Clements: Yes.

Wilson: Bernie Guerrettaz?

Guerrettaz: Yes.

Wilson: William Hosea?

Hosea: Yes.

Wilson: Mary Beth Kaczmarczyk?

Kaczmarczyk: Yes.

Wilson: Vicky Sorensen?

Sorensen: Yes.

Wilson: The variance from the development standards is approved 5 to 0.

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The motion in case 2008-VAR-49, Beaumont House Parking Lot Surfacing Variance from Chapter 806, carried unanimously (5-0).

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NEW BUSINESS

11. 2008-CDU-04 Doggoasis Conditional Use, Chapter 804

One (1) 14.33 +/- acre parcel in Richland Township, Section 6 at 9606 W Reeves RD. **Zoned AG/RR.**

BOARD ACTION: Kaczmarczyk introduced the petition.

STAFF ACTION:

Myers: This is a Conditional Use variance petition for Doggoasis. The petition number is 2008-CDU-04. It is located at 9606 West Reeves Road. We will continue here with the summary and background. The request is for a Conditional Use variance for the purpose to operate a dog kennel/boarding/daycare type use. It is located in the Agricultural/Rural Reserve zoning district on a property consisting of about 14.33 acres. Chapter 802 defines the use of kennel as an establishment wherein any person engages in the business of boarding, breeding, buying, keeping, letting for hire, training for a fee, or selling dogs, cats and/or other small domesticated household pets (not farm animals). Although the petitioner is requesting a use that will not utilize breeding or selling, the Conditional Use request is the same. The petitioner could be subject to the limits of the use as they stated in their use determination form and their letter to the Board of Zoning Appeals by a written commitment can be placed upon this petition by the Board and they also will have to abide by commercial site plan standards that they will be working with the Planning Department on if this gets approved. Currently the petitioner has an offer accepted to purchase this property at 9606 West Reeves Road from the current owner with the contingency that a variance be approved. The petition site currently contains a 1,224 square foot single family residence with 2 detached garages, 2 pole barns and an existing chicken coop. The petitioner is proposing to conduct the proposed kennel/boarding/daycare service for dogs on this property that has about 14.33 acres as I stated before with about 12 acres of pasturage type land. The petition site is partially wooded and is currently used for goats and other farm style animals. There are roosters currently in the chicken coop structure. The petition site does contain existing electric and barbed wire fencing for the pasturage area and the petitioner is also suggesting that they do some additional fencing for this type of use. That sort of thing would be discussed during the site plan process. Day to day operations according to the petitioner and this is all in their letter to the Board of Zoning Appeals that is in your packet involves hosting of 5 to 10 dogs with a maximum of 15 or a maximum of 20 on a holiday weekend in the pasturage area, the backyard of the single family residence as well as the walkout basement of the single family residence. At night the petitioner states that the dogs will be hosted in the approximately 312 square foot ground-level living room and will be supervised from the loft above. Clients for this petitioned use would be scheduled to arrive between 7 am and 12 pm for drop-offs and pick-ups. As I stated before, the petitioner has submitted a letter that has a lot of this kind of detail more specifically regarded in packet. You can see that if you want to get more into the weeds of that. Moving on, the location is 9606 West Reeves Road. It is in Richland Township, Section 6. The current zoning is Agricultural/Rural Reserve and in this zoning district this type of use is permitted but it is the Conditional Use, so that is why we are here doing this variance petition. The surrounding properties are also zoned Agricultural/Rural Reserve and much of the area is a mix of agricultural and residential type uses. The Comprehensive Plan has it designated as Farm and Forest. Here are the site conditions and the slope map. As I stated before it is about 14.33 acres. It receives access off of West Reeves Road, which is classified as a minor collector. We will get into more detail about the Highway

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Department's recommendation regarding this access point later in this packet and this presentation. There are no karst features or floodplain on the site. The slope map that we had there a second ago, there is a considerable amount of slope that is greater than 15 percent. Any new construction would likely have to get a Buildable Area variance unless it was located in buildable area, which would be less than 15 percent. It would also have to be included in the site plan that is required for this commercial type use. Here we have some site photographs. Top left here is the long access road that is gravel that comes back from West Reeves Road. Currently looking at this picture you are looking toward West Reeves Road so the petition site was behind me when I took this photograph. The Highway Department's comments on this, they recommend a denial of the use because of this access point. Ben Ayes with the Highway Department stated that it is an issue of sight distance as well as there have been multiple crashes reported in the last 4 years in this area given West Reeves Road and just the speed limit out there and the width as well. The sight distance he stated here to the north is 227 feet and the sight distance to the south is 389 feet. The sight distance requirements he stated are supposed to be 390 both directions. Measurements include clearing brush to the north and south for sight distance requirements. But overall he recommended denial based on this access point. We will go through more photographs of the petition site. This is the existing single family residence with the walkout basement. More photographs here. You can see the chicken coop in the background of the top left photograph. You can also start to see some of the fencing of the pasturage area that is present on the property. The petitioner did state that she would be amenable to, or would prefer, to build additional fencing for this walkout basement type area as well as some other locations. More photographs of the backyard area before we get into the pasturage. You can still see the single family residence there and the chicken coop again in the bottom right photograph. Photographs here of that fenced in pasturage area that kind of goes along to the north and east of the property. That roadway extends back to a couple of pole barns. I did not go back to that area as it was all fenced off so I do not have any photographs of what that area looks like. But in the petitioner's letter it stated that it was mostly pasturage area. I couldn't see any goats that are currently there but I could hear them from the single family residence and when I was taking these photographs. Here we have one of the detached garages that are present on the property. Here is another photograph of the other detached garage and this is immediately adjacent to the other and the single family residence there too. Here we have the petitioner's letters to the Board of Zoning Appeals. It goes into details about the specifics of the type of use and the type of business that they are wanting to conduct on the property. There is a little bit of background information on them as well. I will state that we did receive some remonstrance from neighbors and some concerned members of the public for this petition. None of those letters are included here or in the packet as we got those late last week. Overall, we have a total of 5 individuals that are voicing concerns based on this petition. I believe some of them are on the call tonight so we will likely hear from them. Overall, a lot of the discussion in the remonstrance was concerned about the access point as well as the noise or nuisance of having dogs on this property. They are concerned about noise from barking as well as dogs getting loose. I understand that there is some issue between the current owner or current neighbors, I am not sure who, someone's in the area, someone's dog keeps getting out and the neighbors are frustrated with that. So, understanding that a kennel type use is being petitioned for this property they have concerns about more dogs getting loose and that kind of thing. I think that is most of what I wanted to talk about. I can forward anyone letters if they would like to see them or I can share my screen if that would be something that we would want to do but I am sure we will hear from some of the concerned neighbors after the first round of questioning.

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Overall, staff recommends approval of the Conditional Use for the Kennel Services for Chapter 813, based on the findings of fact and subject to the following condition;

- 1) That the petitioner submit a site plan that complies with the requirements of Chapters 815 and all other applicable regulations contained in the Monroe County Zoning Ordinance.

I will state as well the Board does have the ability to add on to that additional condition of requiring a written commitment if they felt that it would be necessary to limit this approval to the type of use that is described in the letter and not the full scale kennel type use as defined in Chapter 802. I will now take any questions.

RECOMMENDED MOTION:

Approve the conditional use for Kennel Services Chapter 813, based on the findings of fact with the following condition:

1. That the petitioner submit a site plan that complies with the requirements of Chapters 815 and all other applicable regulations contained in the Monroe County Zoning Ordinance.

FINDINGS OF FACT: 1806-CDU-05 Conditional Use, Chapter 813

In order to approve a conditional use, the Board must have findings pursuant to Chapter 813-5 Standards for Approval. The Board must find that:

- (A) the requested conditional use is one of the conditional uses listed in Chapter 813-8 (for the traditional County planning jurisdiction) or Table 33-3 (for the former Fringe) for the zoning district in which the subject property is located. In addition to the other relevant standards imposed by or pursuant to this chapter, the standards, uses and conditions set forth in Section 813-8 are hereby incorporated as standards, uses and conditions of this chapter;**

Findings:

- The petition site is zoned Agriculture/Rural Reserve (AG/RR), as defined by the Chapter 802;
- The Use Table in Chapter 802 specifies that “Kennel, including commercial animal breeding operations” are a Conditional Use in the AG/RR zoning district;
- The Use Table refers to Chapter 802 for conditions for a “Kennel”;

- (B) all conditions, regulations and development standards required in the Zoning Ordinance shall be satisfied;**

Findings:

- The petitioner has requested the kennel/boarding/dog daycare use for the property located at 9606 W Reeves RD;
- There are three specific conditions pertaining to kennels in Chapter 802;
 - 10. Outdoor kennels and storage areas shall not be visible from streets and/or adjacent properties.
 - 15. The Plan Commission may attach additional conditions to its approval in order to prevent injurious or obnoxious dust, fumes, gases, noises, odors, refuse

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matter, smoke, vibrations, water-carried waste or other objectionable conditions and to protect and preserve the character of the surrounding neighborhood.

- 53. Only permitted on lots 5 acres or greater in the AG/RR, CR, and FR zoning districts.
- The conditional use permit is required to accommodate the additional use of kennel/boarding/dog daycare;
- The petitioner will be required to comply with the Performance Standards set forth in Chapter 802-4 of the Monroe County Zoning Ordinance as a condition of Site Plan approval.
- The petitioner will be required to submit a site plan meeting all applicable standards for parking, landscaping, bioretention, signage, etc. prior to receipt of a Land Use Certificate;

(C) granting the conditional use shall not conflict with the general purposes of the Zoning Ordinance or with the goals and objectives the Comprehensive Plan;

Findings:

- Kennel is a permitted conditional use within the Agriculture/Rural Reserve (AG/RR) zoning district;
- The Monroe County Comprehensive Plan designates the area as Farm and Forest;
- The petition site is 14.33 +/- acres;
- The minimum lot size for AG/RR zoning district is 2.5 acres;
- The proposed use will be required to comply with site plan design standards;
- There is no apparent conflict with the general purposes of the Zoning Ordinance;

(D) the conditional use property can be served with adequate utilities, access streets, drainage and other necessary facilities;

Findings:

- The petition site maintains access from W Reeves RD (a minor collector) via a 25' flagpole piece of land under the same ownership;
- The petition site does not exhibit any direct frontage to W Reeves RD;
- The petition site uses a septic system and has access to water;
- This access to this property will be addressed with the site plan review, including the requirement for INDOT driveway permits;
- There are no apparent drainage concerns on site, and stormwater will be evaluated with the site plan review;

(E) the conditional use shall not involve any element or cause any condition that may be dangerous, injurious or noxious to any other property or persons, and shall comply with performance standards delineated in this ordinance;

Findings:

- The proposed use does not present any apparent dangerous, injurious or noxious

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condition;

- Dogs hosted at the petition site will not be allowed at large and will always be restrained by either the existing house, fences, or leashes;
- Dogs hosted at the petition site will be restrained from interacting with the public;
- Dogs hosted at the petition site will be trained to minimize barking during their stay;
- Dog waste will be cleaned up and disposed of properly to prevent odor and protect/preserve the character of the surrounding neighborhood;

(F) the conditional use shall be situated, oriented and landscaped (including buffering) to produce a harmonious relationship of buildings and grounds with adjacent structures, property and uses;

Findings:

- The petition site is primarily forested and provides its own natural buffer to the adjacent property to the west and to the south;
- The property to the north and to the east is owned by the Monroe County Board of Commissioners and is primarily vacant aside from Flatwoods Park to the north managed by Monroe County Parks and Recreation;
- The proposed use of the dog kennel/boarding/daycare appears to be harmonious with the adjacent properties that are rural in nature;
- The petitioner must apply for a site plan review to develop the entirety of the property in compliance with the Zoning Ordinance;

(G) the conditional use shall produce a total visual impression and environment which is consistent with the environment of the neighborhood;

Findings:

- See findings under (B) and (F);
- The petition site is located on 14.33 acres;
- The petition site is accessed via a 25' flagpole piece of land under the same ownership and is not visible from W Reeves RD;
- The petition site is located in a rural area that exhibits both residential and agricultural uses;
- The neighboring properties are zoned Agriculture/Rural Reserve (AG/RR);

(H) the conditional use shall organize vehicular access and parking to minimize traffic congestion in the neighborhood; and,

Findings:

- The petitioner must comply with the standards set forth in Chapter 806 (Parking);
- Chapter 806 of the Monroe County Zoning Ordinance states projects located outside of urban and designated community areas with off-street parking areas less than 4,000 sq. ft. in size may use crushed stone, porous asphalt, porous concrete, permeable paver systems, or plant mix asphalt or concrete;

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- The petition site has driveway access to W Reeves RD, a minor collector road;
- (I) All permits required by other Federal, State and local agencies have been obtained.**

Findings:

- Any newly proposed structures require Building Department and Planning Department approval;
- The petitioner will be required to submit driveway permits from Monroe County Highway Department prior to site plan review;

All conditional uses are subject to the criteria established in Section 813-5. Additionally, in order to approve a conditional use for a Place of Worship in the Two-Mile Fringe, the Board must have findings pursuant to Chapter 813-10(B)(5) - Specific Criteria for Conditional Use Approvals. The Board must find that:

- (A) Design of the structure and site shall be compatible with the surrounding area;**

Findings:

- The petitioner must apply for a site plan review to develop the entirety of the property in compliance with the Zoning Ordinance;

- (B) Outdoor group activities shall not be allowed after 10 pm; and**

Findings:

- The petitioner has stated in their submitted Use Determination that kennel/daycare services will be limited from 7am-8pm, seven days a week;

- (C) Facilities shall have adequate access to collector or arterial streets and traffic shall not travel through a residential neighborhood on local streets.**

Findings:

- The petition site has driveway access to W Reeves RD, a minor collector and does not access through a residential neighborhood on local streets.

QUESTIONS FOR STAFF – 2008-CDU-04 - Doggoasis

Kaczmarczyk: Thank you Drew. First of all, I would like to apologize for I got my papers shuffled. This is case number 2008-CDU-04. My apologies, I had my papers shuffled. Any questions for Drew? Seeing no staff questions for Drew. Is the petitioner here?

Myers: I believe so.

Nester Jelen: What is the name Drew?

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Myers: Karen Swedo or Keith Swedo.

Nester Jelen: Ok, let me unmute them.

PETITIONER/PETITIONER'S REPRESENTATIVE – 2008-CDU-04 – Doggoasis

Nester Jelen: Karen, you are unmuted. Can you hear us?

Swedo: Yes, Karen Swedo here.

Nester Jelen: Ok, we can hear you.

Kaczmarczyk: Do you swear to tell the truth and nothing but the truth?

Swedo: Yes.

Kaczmarczyk: OK, thank you. You may continue.

Swedo: Is it my turn to speak?

Kaczmarczyk: Yes, if you would like to.

Swedo: Apologies. Thank you everybody for being a part of this. I would just like to say that this has been a dream in the making since I was a child and I have really already proved myself in this community that I am able to handle these dogs in a very respectful, responsible manner. I have over 100 reviews from people written in that last 2 years that boast greatly of my competence, my care for the dogs, the joy that all of the animals have when we do what we do with them. I am happy to address any concerns that anybody may have. Yes, thank you very much.

Kaczmarczyk: Ok, does anyone have any questions for the petitioner? No, questions for the petitioner. Is there anyone else here who would like to speak on behalf of the petition?

Swedo: Yes, this is Keith Swedo. I am buying the property with Karen. I am her dad.

Kaczmarczyk: Do you swear to tell the truth and nothing but the truth?

Swedo: I do.

Kaczmarczyk: Thank you.

Swedo: I just wanted to address the noise concerns. Usually dogs bark when they are bored or they are unhappy. Karen has brought about a dozen dogs to my house more than once and they have never created a noise problem. They don't bark because they keep each other entertained and they are never bored or wanting to get out or unhappy or needing anything. She is really amazing the way that she can handle a group of dogs. I have never seen anybody do that before. But I just wanted to say that I have never had any trouble with her dogs when she brings them over.

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Kaczmarczyk: Any questions for Mr. Swedo? Thank you, sir. Would anybody else like to speak on behalf of this petition? See anything, Jackie?

Nester Jelen: I see Mr. Bob Hopkins and I will note that this is still in support of the petition.

Kaczmarczyk: Mr. Hopkins, do you wish to speak in behalf of the petition?

Hopkins: Sorry, I didn't mean to come in yet.

Kaczmarczyk: Anybody else here who would like to speak on behalf of this petition?

Nester Jelen: I am not seeing anyone.

Kaczmarczyk: Anyone here to speak against the petition?

SUPPORTERS – 2008-CDU-04 – Doggoasis: None

FURTHER SUPPORTERS – 2008-CDU-04 – Doggoasis: None

REMONSTRATORS - 2008-CDU-04 – Doggoasis

Nester Jelen: I have Bob Hopkins and then Rebecca.

Kaczmarczyk: Ok, Bob, go ahead please. Do you swear to tell the truth and nothing but the truth?

Hopkins: Yes, I do. My main concern is along with the Highway Department. Their driveway comes out at an angle and there is a big barn there so there would be a very big chance of a lot of accidents there. This road is crazy during rush hour times and we are talking from 7 am on. People take this road as a short cut from Spencer to Ellettsville for work and the traffic is unbelievable and going home time too. I totally support what the Highway Department said. That is all that I have.

Kaczmarczyk: Thank you sir. Would anybody else like to speak against this petition? Would you state your name?

Reed: Rebecca Reed.

Kaczmarczyk: Do you swear to tell the truth and nothing but the truth?

Reed: Yes.

Kaczmarczyk: Thank you.

Reed: Thank you. I appreciate your time. They seem like sweet kids and reminded me of my husband and I when we first bought the place. I wish them the best. However, again on the entrance to the driveway it is a nightmare. It always has been. It does come off at an angle. We have had

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both windows down and the radio off and then you are lucky if you don't have a close call pulling out there. The ones across the street have 2 driveways that come out on either side of our driveway that again curves. You can see from the satellite views that there is an issue there. The driveway itself is, well, let me say we own an acre on what was a 15 acre farm. We are landlocked in the middle of this proposed dog kennel situation on all 4 sides. We have an easement to their driveway back to our driveway and I believe I sent some pictures today. We didn't receive any notification. Friday when a neighbor called me and I called Drew and he kindly sent me the packets by email. So, I haven't had much time to organize what I would have liked to have done appropriately. We are not only landlocked but the driveway has an incline that I wish I could have, I was trying to measure the elevation on it but the gps wouldn't go through the trees, so I couldn't get an accurate reading on that. But it is intense I should say. One person, when it snows you always want to be the first person out because the second person probably won't make it. The way home, on the way down the driveway is often a bobsled run come winter and you are led by the weather forecast. There is no doubt that if this happens I will have to ask the Stikeweathers' up on Reeves Road if I can park at their house because there is no way I can get out with there being traffic down here. That is just part of the driveway problems. Again, there are photos that explain it a little better. From the top of the driveway, which was considered a road, someone mentioned that as a road but it is literally a driveway that comes off of Reeves Road. A visual here, the top of the driveway just to their home, not to ours, if you were to lay the Empire State Building and the Statue of Liberty down that would almost get you to their house. So, it is a lengthy driveway that goes downhill, uphill as you going out. When it gets sunny after the snow and the roads are completely clear it is deceiving because it then freezes with the trees. On both the sides there are tall trees, approximately 80, 85 foot trees on both sides of the driveway and therefore it becomes ice and when everyone else has clear roads you can have a week's worth of nothing but ice. It becomes very challenged. A lot of people have considered blacktop, paving it. Heaven forbid if that was to ever happen because it would really be even more of a challenge to do that and that is just part of the driveway issues. We have water rights to the well that is on the 9606 property. I understand although it has not been told to me that they are planning on putting rural water in but it still leaves a tremendous amount of questions for our property to the water situation. The wildlife is amazing. I think that the deer will disappear. They have almost already disappeared. We used to have 12 in the yard every night, which was a highlight to us but they are about gone. It was stated in the petition that the neighbors dogs were a big issue and that is not been the case with us. I love cats and dogs so I wouldn't want it to be said that I was complaining about their dogs or goats because they haven't been an issue that way. But the wild life is also an issue because there are coyotes everywhere and at night they howl, snakes, raccoons. I believe no matter how well you handle your dogs, especially different dogs in daycare, they are going to be constantly submitted to different animals and different sounds that maybe they won't be able to control their barking. So, there is an electric barbed wire fence at this point on 3 sides of our property, 2 and half sides I should say and I don't know that we said this but we bought the property in 1985. It is a lovely place. You come down the driveway and you think it is great but it kind of eats people. It has changed hands twice in 2 years because before we bought it. It just comes with, you have to love it out here and I don't think, I think they are going to have challenges with their customers getting up and down the driveway. UPS, Fedex, the USPS doesn't deliver here not to me and they don't like to come down, they will in the summer but they ask not to. In the winter they refuse to. It just isn't an easy property to live on and certainly I wouldn't think to do business on. Yeah, it is just real difficult and you have to get to know it before you can do anything. Plowing the driveway is often the worst thing you can

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possibly do to it because it packs it in. Even the first person won't get out. We have had 2 people, we usually wind plowed, get it ourselves with our tractor and our grader blade but the 2 times that we had people come down and do it for hire they were both hung up and had to be towed out and kindly asked us not to call them next year, which we didn't obviously. This property is full of challenges and not to mention the fact that I am literally landlocked on 4 sides here so, and our driveway, our legally owned driveway is a very small amount if this. I have no control beyond a tiny bit of curve on what is actually necessarily for me to get out of here and I am getting to old to walk out of here. It will be 1,900 feet to the top of where I will have to park, if this goes through which is no fun either way up or down I guess. There are so many other things I could and would have loved to have added but I literally got the information on this on Friday afternoon. Drew was kind enough to send it to me quickly because I didn't receive a notification and I wasn't notified by the neighbors previous to that either or the petitioner. Again, I think that it would probably be a great endeavor. I think that it is truly wrong for here. I really do, yeah, I sure do. So, I guess that is maybe all that I can say. I hope that maybe if at all possible I would be allowed some time to gather the facts because 3 days wasn't even to do it respectfully. Thank you. I appreciate it.

Kaczmarczyk: Thank you Rebecca.

Reed: Oh, I do have one question. I am so sorry. I do have one question. It said 7 to 12 as far as drop-off for the animals but I didn't see anything as far as if it is a daycare are they going to be coming in the evening to put them up I assume at some of them at least a percentage of them and I wondered what they might think that timeframe would be.

Kaczmarczyk: That is actually a good question, Rebecca and is the petitioner willing to answer that for us as far as the daycare pickup times?

Swedo: This is Karen Swedo, the petitioner.

Kaczmarczyk: Hi, Karen. Can you address the daycare pickup times for us?

Swedo: Yes I did include that in my letter to the Board. Pick-up and drop-off would be between the hours of approximately 7 am until 12 pm and then again between 4 pm and 8 pm. While I included it in my letter it was not included in the meeting packet but the information was available. Also, may I add one thing too? When I turned in all of my forms I included Miss Rebecca on the list of neighbors contact and when I received the mail confirmation papers to be stamped by the mailing department, it did not include her on that list. But since I had included her on multiple forms that I had turned into the department I just assumed that they had decided that she did not need to be contacted for whatever reason. So, again there I had included that information but the board or the department did not say that I had to contact her. So, I apologize.

Kaczmarczyk: That's a question for staff. Was she contacted?

Myers: She was not. She did not receive the notification letter and that was an oversight on planning staff. I will apologize for that. She did not get included in the buffering when I used the buffering tool on elevate to check the number of individuals that are getting notification letters. Since she is surrounded that did not include her and I do apologize for that.

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Kaczmarczyk: Next question. Is this a shared driveway, Drew?

Myers: Yes, it is a shared drive with the petition site as well as Ms. Reed who lives in that smaller parcel that we spoke about just a little bit ago.

Nester Jelen: Just a quick clarification point Larry or Dave. Since we did not send neighbor notice to one of the adjoining property owners, are we required to continue the case?

Wilson: Dave, my understanding is if somebody doesn't get notice and is actually at the meeting we can accept that.

Schilling: Yes, the purpose of sending the notice is to have people show up and speak if they wish. If they show up and speak the purpose of the notice has been satisfied unless they can demonstrate that they didn't have sufficient time to prepare a position or a response.

Reed: Are you, I am sorry.

Kaczmarczyk: Go ahead.

Reed: I didn't know if I could speak or not. I am sorry. Are you in the position to look at the photos that I sent Drew today on the fly for fear that I wouldn't have an opportunity to do anything later than 4 o'clock? Without actually understanding the landlocked is the position of this situation. It is a challenge. People have for 35 years come down our driveway although they were going to but goes to Castello's house and then we have to pull them out because you can't once you get around the curve there is no way out. Once they have done that there is no way for us to get out because if it's bad weather, if not. Delivery trucks won't come down.

Swedo: This is the petitioner, Keith Swedo. Could I say one thing? To the landlocked home owner, we were hoping to eventually to buy her property so she wouldn't have that landlocked property at all. I don't know if she would be interested in selling it. It sounds like she has got a lot of problems with the property as it is.

Reed: No, I wouldn't be. It has always been a situation that, no, I should just say, it's not for sale. It won't be for sale. The children want it and we will keep it.

Clements: is it possible to continue this case? Because it sounds as though there is some issue with the notice.

Kaczmarczyk: It looks like Drew has got those pictures up on the screen. Is that true, Drew?

Nester Jelen: I am sharing them. Drew just sent them to me. Yes, this is some remonstrance photos.

Reed: Again, I apologize. I did that on the fly. I would have preferred to have done it with detail and explanation a little more clear. Again, Karen and Keith seem like dolls and I am sure it would just work out wonderful. I just truly don't like being the fly in the ointment for them or for Mary, the homeowner right now. I really don't be it just isn't feasible. Most people that own that place

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say they would like to buy it and I think that is just humiliating. They just assume that I will sell the place.

Kaczmarczyk: Would they be required to work on that driveway if they get the use permit or the variance?

Nester Jelen: That is a good question. Because the conditional use as a kennel it could be that they would be asked to improve that during the site plan review. It is a little bit of a grey area Mary Beth just because we have residential site plans and we have very commercial site plans. Some of these conditions uses that we get are kind of more like a smaller commercial use than a general commercial use. The standards for Chapter 815 do require paving and landscaping and things like that. I know that they have the fee simple lot goes all the way down to Reeves Road so they could be asked to improve that roadway but they can't move it because there is no other, they don't own any land around it to move it. It is in the spot it is. The Highway Department brought us those recommendations kind of after the packet went out we received that so that is kind of new information for us as well.

Reed: It is 25 foot I understand. I didn't actually know that. I have never known how wide it was. But the actual road is at pretty much the largest that I can find other than at the top of the road where you pull off the road. The driveway is 8 foot wide and there is limited ability without doing massive logging widen it. The drainage ditches would have to be put in. It would be extensive. I am not saying they couldn't and it would be a delight to have it improved, there is no doubt. The photo that I sent was of 160 feet out of 1,900 totally. It is a lovely driveway when the weather is nice, but, yeah it is a nightmare when it's not. It is beyond a nightmare. You have to stop, 2 people can't get, you have to stop at the bottom and try to see the top to see that nobody is coming in. With people leaving and coming I think that might be an issue.

Kaczmarczyk: Thank you Rebecca.

Reid: You are welcome. Thank you.

Kaczmarczyk: Is there anyone else here who wishes to speak against this petition?

Hopkins: Yes.

Kaczmarczyk: Ok.

Hopkins: This is Angela Hopkins.

Kaczmarczyk: Do you swear to tell the truth and nothing but the truth Angela?

Hopkins: So help me god, yes I do. My concern is the area in the basement that she plans to use for 15 to 20 dogs. The standard for boarding is 30 to 40 square feet per dog and if she has 15 that is only 20 square feet. If she has 20 that is only 15 square feet per dog. So, that is not even meeting the standard that is expected for boarding and if the weather is bad those dogs will be inside all day. That is too small.

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Kaczmarczyk: Are you a neighbor there?

Hopkins: Yes I am and we were not notified either.

Swedo: If I could just make one comment that this isn't a standard boarding operation that the dogs would

Hopkins: Doesn't matter. Doesn't matter. Square foot is still the same I looked it up.

Swedo: Ok, well, they would be able to roam the house freely so it's not like they would be certain square footage.

Hopkins: That would concern me even more. You have 15 to 20 dogs roaming the house at 3 levels, you cannot be watching them all.

Nester Jelen: Typically, for public comment, folks, we don't usually talk back and forth to the representative, petitioner, remonstrance. We are just going to try and address the questions and Keith if we want to look back to you, we will do that.

Hopkins: From what I have heard she has 2 years' experience boarding dogs in a smaller number than she is going for now and I just don't feel comfortable with that at all.

Kaczmarczyk: And you say you were not notified, is that true?

Hopkins: No, we were not notified except by a neighbor.

Myers: I believe with that notification I believe that they were outside of the required distance.

Hopkins: We are at 3677 West Reeves Road. We are their next neighbor down the road across the street.

Myers: I will have to check the distance requirements on that just to be sure.

Kaczmarczyk: It is sounding like we might have to continue this case if the neighbors have not been properly notified.

Wilson: All we need is a motion.

Guerrettaz: Hang on just a second, do we want to go through and finish out people who are speaking against the petition first and then?

Kaczmarczyk: Ok, we can do that if you like.

Guerrettaz: I am just asking to finish it out.

Kaczmarczyk: Well, if everybody has not been notified there may be more that want to.

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ADDITIONAL QUESTIONS FOR STAFF – 2008-CDU-04 – Doggoasis

Guerrettaz: Right, I understand. I was just asking. Here are my 2 questions. One, just to try to understand the questions that are coming up. We are not approving a number of animals on a property we are just, those regulations are outside our scope. Is that correct Jackie?

Nester Jelen: You would be for a kennel use. The standards for the kennel use don't necessarily, let me pullup the PowerPoint again.

Guerrettaz: If they say they are going to have 15 animals. We are not approving 15 animals, we are approving something that meets the state requirements.

Nester Jelen: Correct. You could ask them that they commit to a certain number that they stated but this is what the ordinance states.

Guerrettaz: I think I am in agreement with what Mary Beth was saying but the one thing that I would like in the interim because I can make the motion or whoever can make the motion to continue. If the Swedo's understand some of the site improvements that make me expected of them after an approval tonight, what is going to be expected of them for the site plan improvements? That is a question to the Swedo's. Have you looked into that to understand what that expense, timeline and cost are going to be?

Swedo: This is Karen Swedo, the petitioner. I have thoroughly read the chapter that you guys have about the site plan review and I have gone over that. About half the information, I would say is in the work that I have already done and turned into you and then the other half there was almost no point in perusing it until we have gotten past this point. I am very much open to the idea of paving the driveway, doing any kind of work that needs to be done to make this a nonissue.

Guerrettaz: Ok, that answers my question. I can make a motion, Mary Beth, if we are to that point.

Kaczmarczyk: Yes, why don't you go ahead and do that Bernie.

FURTHER QUESTIONS FOR STAFF – 2008-CDU-04 - Doggoasis

Guerrettaz: In case number 2008-CDU-04, request is for a Conditional Use for Kennel Services Chapter 813 at 9606 West Reeves Road, I move that we continue this petition to the next BZA meeting that staff deems appropriate, in order to make sure that the petition and the application is met properly.

Kaczmarczyk: I **second** that motion.

Wilson: The motion is to continue petition number 2008-CDU-04, Conditional Use Permit for a Doggoasis to the next appropriate BZA meeting. Again, a vote in favor is a vote to grant the continuance. Bernie Guerrettaz?

Guerrettaz: Yes.

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Wilson: William Hosea?

Hosea: Yes.

Wilson: Mary Beth Kaczmarczyk?

Kaczmarczyk: Yes.

Wilson: Vicky Sorensen?

Sorensen: Yes.

Wilson: Margaret Clements?

Clements: Yes.

Wilson: The continuance is approved 5 to 0. We will likely have this on the agenda for the November meeting, or for the October meeting and what we will do is staff will review the adjacent neighbors and will resend notice so that we make sure that everybody has notice of the October meeting.

The motion in case 2008-CDU-04, Doggoasis Conditional Use, Chapter 804, in favor continuing the petition to the next meeting of the Board of Zoning Appeals, carried unanimously (5-0).

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NEW BUSINESS

12. 2008-VAR-50 Feuquay Front Yard Setback Variance to Chapter 833

One (1) 0.36 +/- acre parcel in Bloomington Township, Section 15 at 4001 N Rural ST. **Zoned RS3.5.**

BOARD ACTION: Kaczmarczyk introduced the petition.

STAFF ACTION:

Myers: Thank you. This is the Feuquay Front Yard Setback Variance to Chapter 833. I will go ahead and say I am not 100 percent sure how to pronounce the name, so I do apologize if I am pronouncing it incorrectly. This petition is for the Front Yard Setback Variance and it is located at 4001 North Rural Street. The petitioner requested a design standards variance from the Front Yard Setback Requirement of Chapter 833 for the purposes of demolishing the existing 672 square foot detached garage and constructing a new 960 square foot detached garage in the same location on the property. The front yard setback for their property, the requirement for Single Dwelling Residential 3.5 zoning district is 25 feet from right of way. However, this property is located in the Fairwood Terrace Addition Subdivision and that subdivision plat lists a setback of 30 feet. The location of the existing detached garage is only approximately 20 feet from the edge of pavement from East Richland Drive and this would result in an encroachment of approximately 10 feet into the required 30 foot setback as delineated on the plat. It would have been an encroachment if it was the 25 feet as well. That is why we are here for this variance. As I stated, it is located at 4001 North Rural Street. It is in Bloomington Township, Section 15. The current zoning is Single Dwelling Residential 3.5. Estate Residential is adjacent to the west. The Comprehensive Plan designates this area as Rural Residential. The site conditions and slope map for the property: it is predominantly flat with frontage on both North Rural Street as well as East Richland Drive, both of which are local roads. There is no FEMA Floodplain, karst or any other unique conditions present on the petition site. The site drains mostly to the northwest. Here we have some photos of the petition site. The top left photograph is standing at the corner. That is East Richland Drive that you see in the corner of that photograph and behind me in this photo is North Rural Street. The bottom right photograph is the single family residence that exists on the property. This is turning left from those 2 previous photos. You see North Rural Street in the top left photograph and you can see the existing 2-car garage there in the background and then a closer up picture of that 2-car garage in the bottom right photograph. More photos of this area in general where they will be demolishing the existing detached garage and proposed to build a new one. Here is the petitioner's letter to the Board of Zoning Appeals that states their intent to tear down the existing detached garage and build a new one with more space for storage. They will also be using a part of the concrete that is also located near the detached garage. Here is a submitted site plan by the petitioner that shows where their septic fields are and the existing home as well as the current and proposed expansion of the detached garage. Here I have included the subdivision plat for the Fairwood Terrace Addition. The next page has a zoomed in image of it as well. You can see there that 30 foot building setback line along East Richland Drive and that is the setback that we go with when we do variances, if they are in a platted subdivision we go with whatever the subdivision plat states for the property. Overall, Planning Staff recommends approval of the design standards variance to Chapter 833 for Front Yard Setback based on the findings of fact and subject to the Monroe County Highway and Drainage Engineer reports. I will now take any questions.

RECOMMENDED MOTION:

Approve the design standards variance to Chapter 833 for Front Yard Setback based on the findings of fact and subject to the Monroe County Highway and Drainage Engineer reports.

FINDINGS OF FACT: Front Yard Setback Chapter 833

812-6 Standards for Design Standards Variance Approval: In order to approve an application for a design standards variance, the Board must find that:

- (A) **The approval, including any conditions or commitments deemed appropriate, will not be injurious to the public health, safety, and general welfare of the community, because:**

(1) It would not impair the stability of a natural or scenic area;

Findings:

- Approval of the variance would allow the demolition of the existing 672 sq. ft. (24' x 28') detached garage and the construction of a new 960 sq. ft. (30' x 32') detached garage in the same location on the property;
- There is no FEMA floodplain on the site;
- There are no visible karst features on the site;
- There are no designated natural or scenic areas nearby;
- The petition site is not in the Environmental Constraints Overlay;
- The petition site is predominately flat with the majority of the property exhibiting slopes under 15 percent.
- **Conclusion:** Approval of the variance would not impair the stability of a natural or scenic area.

(2) It would not interfere with or make more dangerous, difficult, or costly, the use, installation, or maintenance of existing or planned transportation and utility facilities;

Findings:

- See Findings A(1);
- The property contains frontage on N Rural ST (a local road) and frontage with access off E Richland DR (a local road);
- Allowing the detached garage to be constructed in the proposed location will have no foreseeable impact on utilities;
- The site is serviced by a septic system;
- **Conclusion:** Approval of the variance would not interfere with or make more dangerous, difficult, or costly, the use, installation, or maintenance of existing or planned transportation and utility facilities.

(3) The character of the property included in the variance would not be altered in a manner that substantially departs from the characteristics sought to be achieved and maintained within the relevant zoning district. That is, the approval, singularly or in concert with other approvals - sought or granted, would not result in a development

profile (height, bulk, density, and area) associated with a more intense zoning district and, thus, effectively re-zone the property; and,

Findings:

- See Findings A(1) and A(2);
- The property is zoned Single Dwelling Residential 3.5 (RS3.5);
- The property is Lot 39 of the Fairwood Terrace Addition Subdivision;
- The Fairwood Terrace Addition Subdivision Plat lists a required 30' building setback line for property fronting E Richland DR;
- The location of the proposed detached garage is approx. 20' from the edge of pavement from E Richland DR, an encroachment of 10' into the platted 30' setback;
- The use of the property is residential;
- The surrounding areas are residential;
- The Comprehensive Plan designates this area as Rural Residential;
- **Conclusion:** Approval of the variance would not alter the character of the property in a manner that substantially departs from the characteristics sought to be achieved and maintained with the relevant zoning district.

(4) It would adequately address any other significant public health, safety, and welfare concerns raised during the hearing on the requested variance;

Findings:

- The Board of Zoning Appeals may request the petitioner to address any other significant public health, safety, and welfare concerns raised during the hearing;

(B) The approval, including any conditions or commitments deemed appropriate, would not affect the use and value of the area adjacent to the property included in the variance in a substantially adverse manner, because:

(1) The specific purposes of the design standard sought to be varied would be satisfied;

Findings:

- See Findings A(1) and A(3);
- The purpose of the front yard setback requirement of 30' on the Fairwood Terrace Addition plat is to preserve the general character of zoning district, provide a buffer between adjacent property owners, and provide an additional buffer of safety from roadways;
- **Conclusion:** Approval of the variance would not significantly impact the purposes of the design.

(2) It would not promote conditions (on-site or off-site) detrimental to the use and enjoyment of other properties in the area (e.g., the ponding of water, the interference with a sewage disposal system, easement, storm water facility, or natural watercourse, etc.); and,

Findings:

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- See Findings A(1), A(3), and B(1);
- The proposed detached garage does not interfere with any easements or utilities;
- **Conclusion:** There are no foreseeable detrimental conditions to the use and enjoyment of other properties that would result from maintaining the current location of residential accessory structure.

(3) It would adequately address any other significant property use and value concerns raised during the hearing on the requested variance; and,

Findings:

- The Board of Zoning Appeals may request the petitioner to address any other significant property use and value concerns raised during the hearing on the requested variance;

(C) The approval, including any conditions or commitments deemed appropriate, is the minimum variance necessary to eliminate practical difficulties in the use of the property, which would otherwise result from a strict application of the terms of the Zoning Ordinance.

Findings:

- The location of the proposed detached garage is the only location on the property suitable for driveway access given the location of the petitioner's existing septic tank and field;
- Reducing the size of the proposed detached garage to meet the 30' setback would significantly reduce the utility of the residential accessory structure;
- Petitioner has applied for one variance, which is the minimum necessary in order to obtain an Improvement Location Permit waiver for the residential accessory structure in its proposed configuration.

All variance approvals shall be considered to be conditional approvals. The Board shall have the authority to impose specific conditions as part of its approval in order to protect the public health, and for reasons of safety, comfort and convenience (e.g., to insure compatibility with surroundings). Variance approval applies to the subject property and may be transferred with ownership of the subject property subject to the provisions and conditions prescribed by or made pursuant to the Zoning Ordinance.

NOTE: The Board must establish favorable findings for ALL THREE criteria in order to legally approve a design standards variance.

QUESTIONS FOR STAFF – 2008-VAR-50 - Feuquay

Kaczmarczyk: Anyone have any questions for staff? Is the petitioner here and would they like to speak?

PETITIONER/PETITIONER'S REPRESENTATIVE –2008-VAR-50 – Feuquay

Feuquay: Yes ma'am.

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Kaczmarczyk: Would you like to speak?

Feuquay: Yes ma'am.

Kaczmarczyk: Do you swear to tell the truth and nothing but the truth?

Feuquay: I do.

Kaczmarczyk: Alright, go ahead.

Feuquay: The main reason for the request is that current structure is unsafe. We have 3 children. We have been looking to replace it for a while and I now have the opportunity to do so. The current structure, like Drew said, we aren't changing where it sits as far as the setback from the road. Due to the septic and the playground we really don't have anywhere else to place it. The request would be to do the structure as is with adding just a little bit more room.

Kaczmarczyk: Anyone have any questions for the petitioner? No. Alright, thank you. Anyone else here who would like to speak on behalf of this petition? Is there anyone here who would like to speak against this petition? Seeing none. Somebody have a motion for us?

SUPPORTERS – 2008-VAR-50 – Feuquay: None

FURTHER SUPPORTERS – 2008-VAR-50 – Feuquay: None

REMONSTRATORS - 2008-VAR-50 – Feuquay: None

ADDITIONAL QUESTIONS FOR STAFF – 2008-VAR-50 – Feuquay: None

FURTHER QUESTIONS FOR STAFF – 2008-VAR-50 – Feuquay

Guerrettaz: I can do it if I can find it. Sorry. **In the matter of case number 2008-VAR-50, design standards variance to Chapter 804 for Front Yard Setback at 4001 North Rural Street, I move approval of the variance based on the staff report, findings of fact, and subject to the requirements of the Monroe County Highway Department MS4 Operator, Drainage Engineer and the Planning Staff.**

Kaczmarczyk: I will **second** that.

Wilson: The motion in petition 2008-VAR-50, Feuquay Front Yard Setback Variance. A yes vote is a vote to approve the variance with the findings and conditions as set forth in the staff report. William Hosea?

Hosea: Yes.

Wilson: Mary Beth Kaczmarczyk?

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Kaczmarczyk: Yes.

Wilson: Vicky Sorensen?

Sorensen: Yes.

Wilson: Margaret Clements?

Wilson: Yes.

Wilson: Bernie Guerrettaz?

Guerrettaz: Yes.

Wilson: The variance is approved by a 5 to 0 vote.

The motion in case 2008-VAR-50, Feuquay Front Yard Setback Variance to Chapter 833, in favor of approving the variance, carried unanimously (5-0).

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NEW BUSINESS

13. 2008-VAR-51 Hughes on Fairfax ECO Area 1 Variance to Chapter 825

14. 2008-VAR-52 Hughes on Fairfax Buildable Area Variance to Chapter 804

One (1) 16.63 +/- acre parcel in Clear Creek Township, Section 14 at 8482 S Fairfax RD. **Zoned AG/RR.**

BOARD ACTION: Kaczmarczyk introduced the petition.

STAFF ACTION:

Creceilius: Thank you. We are going late tonight.

Kaczmarczyk: Yes. We are.

Creceilius: Right off the bat, I want to say that I made an error in my staff report. Mainly I just, I combined my recommendation but I didn't delete the last. The second approval sentence can basically just be ignored. It is 2 variances but I did combine them in the end. I am sorry for that. This is 2 design standards variances, again like my previous one, from Chapter 804 for Buildable Area the 15 percent slope and from Chapter 825 ECO Area 1, 12 percent slope land disturbance. The petition site is located in Clear Creek Township, Section 14. It is located at 8482 South Fairfax Road. Sorry, Jackie, I went a little out of order for this one. It is 16.63 acres and it is currently zoned Agricultural/Rural Reserve and also ECO Area 1. The Comprehensive Plan designates it as Rural Residential. The petitioner is requesting 2 design standards variances in order to become compliant with the zoning ordinance for after-the-fact grading activities and also to permit the addition of 2 decks and a balcony to the existing structure. Using this diagram, the original owners purchased this property in 2000 and had a building permit and worked on it until roughly 2004 and then ceased all construction. The home is currently not finished, not livable. The petitioners just bought this property this year, last year. Not really realizing the status of permits there was grading done that changed the driveway, which is kind of this purple highlight area. The area that is circled right not that is the existing driveway. I just got a little crazy with my highlighter. So ignore the circle. That is the existing driveway. The blue, pink, purple area that is the new driveway that was installed without a grading permit. In the pink color is areas that had elevation change from grading. The green is where they graded out for the installation of a septic system, which would be required for a single family home and it was never done with the original construction. The blue area on the back of the house attached are the areas where the proposed decks and balcony will be. These variances were triggered by an open enforcement case for grading without a permit. A Stop Work Order was issued on May 12th of this year for those areas that are both beyond 15 percent non-buildable area for structures and 12 percent any land disturbance under ECO Area 1. This one has a little bit of history so I want to make sure I am following along with my notes. The property was vacant. The petitioners purchased in 2019. The septic system that they installed, they did get the permit through the Monroe County Health Department and it was completed in December 2019. The area in the back where Jackie is highlighting with the mouse that was approved by the Health Inspector, Mr. Randy Raines. Unfortunately, it was not covered under a Building Permit or a Grading Permit. It would have been beyond the 12 percent slope. The proposed construction that is under this Grading Permit for the grading work that has already been done is for the construction of 2 first floor decks and 1 balcony on the west or the rear side of the home. The use of the property is currently a single family residence. It is noted that if the petitioners ever pursue a different use

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we do have some documentation that says the petitioners are interested in doing a bed and breakfast, we just want to note that if that use is ever proposed it will have to be reviewed and approved by the Planning Department through a commercial site plan and other requirements. Original construction of this structure in 2000 we have documentation that it did receive an approved Building Permit. We don't have any documentation as to where the location was, so we don't know whether Planning approved a footprint of the house in areas that are beyond 15 and 12 percent slope or if it was moved after approval. If this structure and grading were proposed today, the Planning Department would not issue any permits without approved variances for the steep slopes. But because we do not have any documentation from that structure in 2000 we can't really make any determination on that. The owner is trying to finish the interior and the decks and balcony to try to get that Certificate to Occupancy. Approval of this variance would allow the petitioner to maintain the septic system as is, maintain the excavation that has been conducted to date and it would also approve an ILP for the construction of the proposed decks and balcony. Jackie, can we go back to the 3 aerial views? Some of the original documentation from the Stop Work Order, which is Exhibit 3 in the report, as you can see in 2006 we had construction work, which would have been without a Building Permit at that point. In 2011 we can see still there is construction going on and by 2020, this year we have a new circle drive and excavation behind and on the rear side of the house. Those photos before that they were 2 examples from the Stop Work Order. These are site photos that I took on my site visit just a few weeks ago. This is how the house is standing currently. It is vacant and unfinished inside. The Planning car is parked on that newly installed, well, not so new that there is not grass but fairly recently a new circle drive. From the top left to the bottom that was some grading work that was done. There is quite a bit of large rock and sediment piled up along this erosion control barrier here on the left and then the bottom left photo is just a slightly closer view to see some of that recent soil work. The top right and bottom right are on the rear side of the house. You can see that some of the new work that has been done. There originally was supposed to be a drive that would connect to a couple, like a patio area right there but because of slope and other reasons they have kind of ditched that idea. They graded it out so it's not going to be accessible from that area. But that is still the location of one of the decks and then above it one of the patios. On the left photo you can see this grassy area with the gravel leading down to the right that is the area that would have been a drive that they have now stopped that idea of using. There was some grading work there. This is the backside that would have the 2 first floor decks and a second floor patio on it. So where Jackie's house is right now those are slide doors that would be opening onto a patio hopefully. The 2 right photos are not ideal. It was very hard to take a photo, a good photo of this entire area that was graded for the septic. You can tell it was cleared and you can tell there is a lot of soil and rock buildup right at the edges of the clearing where the septic was installed in December of 2019. Vegetation is coming back but it has been totally cleared of trees and there is still just a lot of debris near the edges. In summary the property is still considered non-complaint until they file the site plan that shows all of the improvements, a Grading Permit (after-the-fact) for all areas that were disturbed without permits, and an Erosion and Grading Control Plan that would be submitted for review under the Grading Permit. So, if the 2 variances are approved, it would permit these activities that have been done after the fact and also approve proposed construction of 2 decks and a balcony. I didn't want to approve this. I did not want to recommend approval but it really does meet the definition of practical difficulty because a septic system was installed and that would have been required for a single family residence no matter what they do with that in the future and offering any kind of denial that would be a practical difficulty in relocating the septic system. What I would like to see,

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so my staff recommendation is approval with the condition that they do submit a Grading Permit and get approval specifically by the Stormwater crew and Highway, making sure that the grading that was done is not going to negatively impact the natural area within the ECO Area 1. Especially, just because there is so much soil and rock debris piled up around some edges that were excavated. Does anybody have any questions?

RECOMMENDED MOTION:

Approve the design standard variance from the Buildable Area (15% slope) requirement and the ECO Area 1 (12% slope) land disturbance restriction of Chapters 80-4 and 825 of the Monroe County Zoning Ordinance based on the findings of fact, specifically 3 (C), regarding Practical Difficulties (i.e. specifically the relocation of the installed septic system).

1. The submission and approval of a grading permit and erosion control plan to be reviewed by the Monroe County Planning Dept. and Highway Dept.'s MS4 Operator.

Approve the design standard variances from the ECO Area 1 (12% slope) land disturbance restriction of Chapter 825 of the Monroe County Zoning Ordinance based on the findings of fact, specifically 3 (C), regarding Practical Difficulties (i.e. specifically the relocation of the installed septic system), with the following condition:

FINDINGS OF FACT: Buildable Area (15%) from Chapter 804

812-6. Standards for Design Standards Variance Approval: In order to approve an application for a design standards variance, the Board must find that:

- (A) **The approval, including any conditions or commitments deemed appropriate, will not be injurious to the public health, safety, and general welfare of the community, because:**

(1) It would not impair the stability of a natural or scenic area;

Findings:

- The petition site is 16.63 +/- acres located within the AG/RR Zone and ECO Area 1 overlay;
- The site currently holds a 10,636 sq. ft. single family residence that began construction in 2000. Construction was halted in 2004;
- Agricultural/Rural Reserve (AG/RR) and is located with the Environmental Constraint Overlay Area 1 (ECO 1);
- The existing structure is incomplete and does not have a Certificate of Occupancy issued by the Monroe County Building Department;
- There are no designated scenic areas adjacent to the petition site;
- There is no evidence that the grading activities or the addition of the proposed decks/balcony would obstruct a natural or scenic view;
- Approval of these variances would allow the petitioner to maintain the septic system as is, maintain the excavation that has been conducted to date as is, and also approve an ILP for the construction of the proposed decks and balcony.
- Conclusion: It would **not impair** the stability of a natural or scenic area.

(2) It would not interfere with or make more dangerous, difficult, or costly, the use, installation, or maintenance of existing or planned transportation and utility facilities;

Findings:

- See findings under A (1);
- The property has access from S Fairfax Road, a designated Major Collector road;
- The after-the-fact grading and proposed construction will not interfere with water lines or the after-the-fact septic system;
- Conclusion: It would **not interfere** with or make more dangerous, difficult, or costly, the use, installation, or maintenance of existing or planned transportation and utility facilities.

(3) The character of the property included in the variance would not be altered in a manner that substantially departs from the characteristics sought to be achieved and maintained within the relevant zoning district. That is, the approval, singularly or in concert with other approvals - sought or granted, would not result in a development profile (height, bulk, density, and area) associated with a more intense zoning district and, thus, effectively re-zone the property; and,

Findings:

- See findings under A(1) and A(2);
- The proposal would meet all other Chapter 804 design standards;
- Planning is unable to determine if the original ILP that was issued was for the current location of the structure within steep slopes exceeding 15% or the location was altered, due to lack of documentation from 2000;
- There isn't a square footage limitation for Single Family Residential structures within the AG/RR zone;
- Any future change in use must be approved by the Monroe County Planning Dept.;
- Conclusion: The character of the property included in the variance would **not be altered** in a manner that substantially departs from the characteristics sought to be achieved and maintained within the relevant zoning district.

(4) It would adequately address any other significant public health, safety, and welfare concerns raised during the hearing on the requested variance;

Findings:

- The Board of Zoning Appeals may request the petitioner to address any other significant public health, safety, and welfare concerns raised during the hearing;

(B) The approval, including any conditions or commitments deemed appropriate, would not affect the use and value of the area adjacent to the property included in the variance in a substantially adverse manner, because:

(1) The specific purposes of the design standard sought to be varied would be satisfied;

Findings:

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- See findings under section A;
- The petition site and adjacent properties are a residential use;
- The adjacent properties are held to the same standards as these variance requests (Chapters 804 and 825);
- Conclusion: The use and value of the area adjacent to the property included in the variance will **not** be affected in a substantially adverse manner.

(2) It would not promote conditions (on-site or off-site) detrimental to the use and enjoyment of other properties in the area (e.g., the ponding of water, the interference with a sewage disposal system, easement, storm water facility, or natural watercourse, etc.); and,

Findings:

- See Findings under Section A and B(1);
- There is no FEMA floodplain on site;
- It is unknown whether the existing structure and after-the-fact grading will interfere with the natural drainage of the site;
- The grading activities have left mounds of rock and soil in various locations and may hinder drainage;
- Planning staff recommends a condition of approval to have the Stormwater MS4 Coordinator review and approve a grading and erosion control plan for this property;
- Conclusion: It **will not** promote conditions detrimental to the use and enjoyment of other properties;

(3) It would adequately address any other significant property use and value concerns raised during the hearing on the requested variance; and,

Findings:

- The Board of Zoning Appeals may request the petitioner to address any other significant property use and value concerns raised during the hearing on the requested variance;

(C) The approval, including any conditions or commitments deemed appropriate, is the minimum variance necessary to eliminate practical difficulties in the use of the property, which would otherwise result from a strict application of the terms of the Zoning Ordinance.

Findings:

- The after-the-fact grading was located within the slopes that exceeded the 15% slope restriction of Chapter 802;
- The petition site does maintain areas that are buildable, under 15% slope;
- The home was granted an Improvement Location Permit in 2000 for the original construction, including a septic permit. The requirements for the 15% buildable area did not become effective until 2015.
- The difficulties faced would be unable to be “reasonably overcome because of a uniquely excessive cost of complying with the standard”, specifically the re-location of the septic system;

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- Conclusion: There **are practical difficulties** in the use of the property as defined in Chapter 801;

All variance approvals shall be considered to be conditional approvals. The Board shall have the authority to impose specific conditions as part of its approval in order to protect the public health, and for reasons of safety, comfort and convenience (e.g., to insure compatibility with surroundings). Variance approval applies to the subject property and may be transferred with ownership of the subject property subject to the provisions and conditions prescribed by or made pursuant to the Zoning Ordinance. **NOTE:** The Board must establish favorable findings for ALL THREE criteria in order to legally approve a design standards variance.

FINDINGS OF FACT: Environmental Constraints Overlay Area 1 (ECO 1)(12% Slope)
812-6 Standards for Design Standards Variance Approval: In order to approve an application for a design standards variance, the Board must find that:

- (A) **The approval, including any conditions or commitments deemed appropriate, will not be injurious to the public health, safety, and general welfare of the community, because:**

(1) It would not impair the stability of a natural or scenic area;

Findings:

- The petition site is 16.63 +/- acres located within the AG/RR Zone and ECO Area 1 overlay;
- The site currently holds a 10,636 sq. ft. single family residence that began construction in 2000. Construction was halted in 2004;
- Agricultural/Rural Reserve (AG/RR) and is located with the Environmental Constraint Overlay Area 1 (ECO 1);
- The ECO Area 1 Overlay restricts any land disturbance, soil or vegetation, in areas that exceed 12% slope;
- The existing structure is incomplete and does not have a Certificate of Occupancy issued by the Monroe County Building Department;
- There are no designated scenic areas adjacent to the petition site;
- There is no evidence that the grading activities or the addition of the proposed decks/balcony would obstruct a natural or scenic view;
- Approval of these variances would allow the petitioner to maintain the septic system as is, maintain the excavation that has been conducted to date as is, and also approve an ILP for the construction of the proposed decks and balcony.
- Conclusion: It would **not impair** the stability of a natural or scenic area.

(2) It would not interfere with or make more dangerous, difficult, or costly, the use, installation, or maintenance of existing or planned transportation and utility facilities;

Findings:

- See findings under A (1);

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- The property has access from S Fairfax Road, a designated Major Collector road;
- The after-the-fact grading and proposed construction will not interfere with water lines or the after-the-fact septic system;
- Conclusion: It would **not interfere** with or make more dangerous, difficult, or costly, the use, installation, or maintenance of existing or planned transportation and utility facilities.

(3) The character of the property included in the variance would not be altered in a manner that substantially departs from the characteristics sought to be achieved and maintained within the relevant zoning district. That is, the approval, singularly or in concert with other approvals - sought or granted, would not result in a development profile (height, bulk, density, and area) associated with a more intense zoning district and, thus, effectively re-zone the property; and,

Findings:

- See findings under A(1) and A(2);
- The proposal would meet all other Chapter 804 design standards;
- Planning is unable to determine if the original ILP that was issued was for the current location of the structure within steep slopes exceeding 12% or the location was altered, due to lack of documentation from 2000;
- The ECO Area 1 Overlay restricts any land disturbance, soil or vegetation, in areas that exceed 12% slope;
- There isn't a square footage limitation for Single Family Residential structures within the AG/RR zone;
- Any future change in use must be approved by the Monroe County Planning Dept.;
- Conclusion: The character of the property included in the variance would **not be altered** in a manner that substantially departs from the characteristics sought to be achieved and maintained within the relevant zoning district.

(4) It would adequately address any other significant public health, safety, and welfare concerns raised during the hearing on the requested variance;

Findings:

- The Board of Zoning Appeals may request the petitioner to address any other significant public health, safety, and welfare concerns raised during the hearing;

(B) The approval, including any conditions or commitments deemed appropriate, would not affect the use and value of the area adjacent to the property included in the variance in a substantially adverse manner, because:

(1) The specific purposes of the design standard sought to be varied would be satisfied;

Findings:

- See findings under section A;
- The petition site and adjacent properties are a residential use;
- The adjacent properties are held to the same standards as these variance requests

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(Chapters 804 and 825);

- Conclusion: The use and value of the area adjacent to the property included in the variance **may not** be affected in a substantially adverse manner.

(2) It would not promote conditions (on-site or off-site) detrimental to the use and enjoyment of other properties in the area (e.g., the ponding of water, the interference with a sewage disposal system, easement, storm water facility, or natural watercourse, etc.); and,

Findings:

- See Findings under Section A and B(1);
- There is no FEMA floodplain on site;
- It is unknown whether the existing structure and after-the-fact grading will interfere with the natural drainage of the site;
- The grading activities have left mounds of rock and soil in various locations and may hinder drainage;
- Planning staff recommends a condition of approval to have the Stormwater MS4 Coordinator review and approve a grading and erosion control plan for this property;
- Conclusion: It **may not** promote conditions detrimental to the use and enjoyment of other properties;

(3) It would adequately address any other significant property use and value concerns raised during the hearing on the requested variance; and,

Findings:

- The Board of Zoning Appeals may request the petitioner to address any other significant property use and value concerns raised during the hearing on the requested variance;

(C) The approval, including any conditions or commitments deemed appropriate, is the minimum variance necessary to eliminate practical difficulties in the use of the property, which would otherwise result from a strict application of the terms of the Zoning Ordinance.

Findings:

- The after-the-fact grading was located within the slopes that exceeded the 12% slope restriction for any land disturbance, vegetation or soil, of Chapter 802;
- The petition site does maintain areas that are under 12% slope;
- The home was granted an Improvement Location Permit in 2000 for the original construction, including a septic permit. The requirements for the 15% buildable area did not become effective until 2015.
- The difficulties faced would be unable to be “reasonably overcome because of a uniquely excessive cost of complying with the standard”, specifically the re-location of the septic system;
- Conclusion: There **are practical difficulties** in the use of the property as defined in Chapter 801;

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All variance approvals shall be considered to be conditional approvals. The Board shall have the authority to impose specific conditions as part of its approval in order to protect the public health, and for reasons of safety, comfort and convenience (e.g., to insure compatibility with surroundings). Variance approval applies to the subject property and may be transferred with ownership of the subject property subject to the provisions and conditions prescribed by or made pursuant to the Zoning Ordinance. **NOTE:** The Board must establish favorable findings for ALL THREE criteria in order to legally approve a design standards variance.

QUESTIONS FOR STAFF – 2008-VAR-51 & 2008-VAR-52 – Hughes

Kaczmarczyk: No questions for staff? Is the petitioner here? Would they like to speak?

Crecelius: I believe I saw Chelsea Moss who is the representative here earlier.

PETITIONER/PETITIONER'S REPRESENTATIVE – 2008-VAR-51 & 2008-VAR-52 – Hughes

Kaczmarczyk: Do you swear to tell the truth and nothing but the truth?

Moss: I do.

Kaczmarczyk: Alright, thank you.

Moss: Good evening. Hopefully we can get this wrapped up so everyone can finish out the night. A couple things that I wanted to address, Anne did a great job there going through the history. I did want to clarify the structural additions that they are wanting approval for. We are looking to put basically a patio at the lower level doors and that would wrap partially around the south end of the house and then above that it would be 2 stories of decking. It is a little difficult to see all of the sliding and French doors on this house. Right now there is a whole bunch of doors to nowhere, which is a bit of a safety hazard to just have doors that open up like that and those were all installed when my client purchased the property. All of those openings and doors were already laid out with the intention of having decks and patios on them. I wanted to clarify what that configuration was. Anne touched on the fact that there was an existing drive going around the house. Part of the reason that drive was removed was to help with some erosion issues along that existing circle drive and so the client did not want to have those get any worse so be removing them it will actually end up being a reduced area that the patio will be encompassed and then have more stable grass and vegetated soil beyond the edge of that patio instead of having the drive wrapping all the way around. The property has set vacant since about 2004. From 2000 to 2004 the portion of the house that you see there all of the exterior and some of the interior work was under construction. Once the construction came to a halt it has sent vacant and that can be a nuisance for the neighborhood, the area. Vacant properties typically don't attract activities that you want in an area. This is very secluded. It is back a long drive, not a place you want a vacant home. It really needs to be completed and that is what my client is looking to do is to complete this so that it is a usable single family residence. There is debris on the site as Anne pointed out. A lot of that is debris since the septic system was not completed until December. This is a 10 bedroom capacity septic field. It is a pretty large, substantial undertaking. Once that was completed you were really getting into

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weather that you couldn't get into fine, finished grading and final seeding on. It is seeded. Most of it has grass growing on it. The piles of debris really couldn't be dealt with in the winter months. By the time we get into spring, I believe it was April when the Atop Work Order was put on, so right about the time that you might consider starting to finish grade some of that. All of a sudden they are hit with at Stop Work Order so there is a lot of debris that needs to be dealt with but until that Stop Work Order is lifted their hands are kind of tied to address that. Those were the main things that I wanted to address. If there are any questions from the Board, I would be happy to field those.

Kaczmarczyk: Anybody have any questions for Chelsea? I see no questions. Anybody else here wish to speak on behalf of this petition?

SUPPORTERS – 2008-VAR-51 & 2008-VAR-52 – Hughes

Popodi: I do.

Kaczmarczyk: Ok, can you state your name for me?

Popodi: My name is Ellen Popodi and I live at 8490 South Fairfax Road. I am immediately adjacent to that property.

Kaczmarczyk: Do you swear to tell the truth and nothing but the truth?

Popodi: I do.

Kaczmarczyk: Alright.

Popodi: I would like to speak in support. Since this couple has bought the property and started working on it has significantly improved over what it had been before and I believe based on what I saw in the pictures and what I have seen here they have done a much better job with the grading and erosion control than the previous builders had and what was happening before they purchased it. The house was getting some unwanted attention from I think people just passing through. So it is really important to me that this get approved and they are able to move forward with it. Thank you.

Kaczmarczyk: Ok, thank you ma'am. It is a very interesting looking house, I must say that. I almost took a drive down there to check it out myself. Anybody else wish to speak on behalf of this petition? Seeing none. Anybody wish to speak against the petition?

FURTHER SUPPORTERS – 2008-VAR-51 & 2008-VAR-52 – Hughes: None

REMONSTRATORS - 2008-VAR-51 & 2008-VAR-52 – Hughes

Owens: Hello, this is Dee Owens, I would just like to have a caution on it.

Kaczmarczyk: Ok, Dee. Do you swear to tell the truth and nothing but the truth?

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Owens: I do.

Kaczmarczyk: Alright, thank you.

Owens: I own a property to the south adjacent and the driveways along there, people come along pretty quickly. I drove past it to see. I didn't even realize the driveway was there. It is difficult for me to imagine a lot of people as a bed and breakfast situation coming in and out and in and out of the particular driveway that is there. I am sorry?

Kaczmarczyk The bed and breakfast issue is not what is before us at the moment.

Owens: I understand that but it was discussed in there and so it was just something to bring forward.

Kaczmarczyk: Any other concerns, Dee?

Owens: Not at this time.

Kaczmarczyk: Alright, thank you. Anyone else wish to speak against the petition? Seeing none. Do we have a motion?

ADDITIONAL QUESTIONS FOR STAFF – 2008-VAR-51 & 2008-VAR-52 – Hughes

Clements: I have a question before we go to the motion, if that is ok.

Kaczmarczyk: Please go ahead.

Clements: I tried to get in sooner but I couldn't unmute my phone in time. I am looking at the pictures of this property and you know certainly we are weighing all of the best possible outcomes and procedures for as many people as possible. But I am looking at those drainage pipes and something about the drainage there doesn't pass my smell test. I don't know if we can make it a condition that be reviewed. It just doesn't, something just doesn't look right with the potential for erosion and further problems that could develop for others downstream. S, I was wondering if somehow or another that could be entered into the discussion.

Crecelius: So, if I can address this question if that is alright, Chelsea. With requiring or having the condition of a Grading Permit, my concern was drainage. So, with approval with a condition of a Grading Permit all of that would be reviewed by the Stormwater Operator.

Clements: Perfect. Ok, because that just doesn't, thank you. That is a big relief to know that is really the essence of what you are doing. Ok, thanks.

Kaczmarczyk: Excellent. Thank you Margaret. Any other questions? Does somebody have a motion ready for us? Bernie?

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FURTHER QUESTIONS FOR STAFF – 2008-VAR-51 & 2008-VAR-52 – Hughes

Guerrettaz: In the matter of case number 2008-VAR-51 and 2008-VAR-52, request is a design standards variance from Chapter 804, Buildable Area and the design standards variance from Chapter 825, Environmental Constraints Overlay Area 1 at 8482 South Fairfax Road, I move that we approve the variance based on staff report, the findings of fact, we include in that;

- 1) The submission and approval of a Grading Permit and an Erosion Control Plan be reviewed by the Monroe County Planning Department, the Highway Department and the MS4 Operator.**

Kaczmarczyk: I will **second** the motion.

Sorensen: Question. Are we including the decks in this motion or is that a separate one that we are going to approve?

Kaczmarczyk: No the decks are included in this motion, I believe.

Nester Jelen: Yes.

Wilson: The vote is on petition 2008-VAR-51 and 2008-VAR-52, variance from ECO 1, Chapter 825 and Buildable Area under Chapter 804 for the property located at 8482 South Fairfax Road, the Hughes property. A vote in favor is a vote to approve both variances based upon the findings and with the condition that a Grading Permit be obtained and reviewed by all responsible departments, including Highway, Stormwater and Planning. Again, a vote in favor is a vote to approve with the findings and with the condition. Vicky Sorensen?

Sorensen: Yes.

Wilson: Margaret Clements?

Clements: I have one last question. My eyes are a little bit funny. Does this include and approval of a dock?

Wilson: No there is no dock involved.

Kaczmarczyk: It is a deck.

Clements: Ok. Thanks. Ok, so yes.

Wilson: Bernie Guerrettaz?

Guerrettaz: Yes.

Wilson: William Hosea?

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Hosea: Yes.

Wilson: Mary Beth Kaczmarczyk?

Kaczmarczyk: Yes.

Wilson: Both variances are approved by a 5 to 0 vote.

The motion in cases 2008-VAR-51, Hughes on Fairfax ECO Area 1 Variance to Chapter 825, and 2008-VAR-52, Hughes on Fairfax Buildable Area Variance to Chapter 804, in favor of approving the requests with conditions as set forth in the motion, carried unanimously (5-0).

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REPORTS:

Planning/Wilson: I think we ought to do a long-term session, just general discussion after the meeting.

Guerrettaz: We just did.

Wilson: I don't have anything.

Kaczmarczyk: Do I have a motion to adjourn?

Guerrettaz: So moved.

Legal/Schilling: No report.

The meeting adjourned at 8:48 P.M.

Sign:

Attest:

Mary Beth Kacmarczyk, Chairman

Larry J. Wilson, Secretary

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