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**BOARD OF ZONING APPEALS
Virtual Meeting via ZOOM - Minutes
November 4, 2020 - 5:30 p.m.**

CALL TO ORDER

ROLL CALL

INTRODUCTION OF EVIDENCE

APPROVAL OF AGENDA

APPROVAL OF MINUTES – August 5, 2020

CALL TO ORDER: Margaret Clements called the meeting to order at 5:30 PM.

ROLL CALL: Vicky Sorensen, Bernie Guerrettaz, Margaret Clements

ABSENT: *William Hosea, Mary Beth Kaczmarczyk*

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

OTHERS PRESENT: David Schilling, Legal, Tech Services

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 August 5, 2020 meeting, carried unanimously.

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ADMINISTRATIVE BUSINESS: None.

OLD BUSINESS:

- 1. 1812-VAR-40 Patzner General Contractor Use Variance to Chapter 802**
One (1) 0.68 +/- acre parcel in Perry Township,
Section 28 at 5605 S Old State Road 37.
Zoned ER. Contact: jnester@co.monroe.in.us
- 2. 2009-VAR-61 Neal Residential Storage Structure Variance from Chapter 802**
One (1) 2.7 +/- acre parcel in Bean Blossom Township, Section 22
at 8458 N Jenner DR. **Zoned AG/RR.**
Contact: tbehrman@co.monroe.in.us
*****CONTINUED BY PETITIONER*****

NEW BUSINESS:

- 1. 2009-VAR-68 Jason Hawkins Minimum Lot Size Variance from Chapter 804**
One (1) 4.0 +/- acre parcel in Benton Township, Section 4 at 7087 N
Tunnel RD. **Zoned FR.** Contact: rpayne@co.monroe.in.us
- 2. 2009-VAR-69 Sowders Side Yard Setback Variance from Chapter 804**
One (1) 0.45 +/- acre parcel in Perry Township, Section 27 at
1750 E Vera LN. **Zoned SR.** Contact: tbehrman@co.monroe.in.us
- 3. 2009-VAR-70 Jared Huff Minimum Lot Size Variance from Chapter 804**
4. 2009-VAR-71 Jared Huff Side Yard Setback Variance from Chapter 804
One (1) 1.27 +/- acre parcel in Bean Blossom Township, Section 29 at 7525
N Stinesville RD. **Zoned AG/RR.** Contact: tbehrman@co.monroe.in.us
- 5. 2009-VAR-72 Rogers & Country Club Sign (Digital) Variance to Chapter 807**
6. 2009-VAR-73 Rogers & Country Club Landscaping Variance to Chapter 830
One (1) 0.26 +/- acre parcel in Perry Township, Section 17 at 2801 S
Rogers ST. **Zoned LB.** Contact: jnester@co.monroe.in.us
- 7. 2009-VAR-74 Prather Use Variance to Chapter 802.**
One (1) 2.18 +/- parcel in Richland Township, Section 25 at 4655 W
Woodyard RD. **Zoned IL.** Contact: dmyers@co.monroe.in.us
- 8. 2010-VAR-75 Clampitt Minimum Lot Size Variance to Chapter 804**
9. 2010-VAR-76 Clampitt Minimum Lot Width Variance to Chapter 804
10. 2010-VAR-77 Clampitt Side Setback Variance to Chapter 804
One (1) 3.75 +/- acre parcel in Polk Township, Section 31 at
9998 S Chapel Hill Rd. **Zoned FR.** Contact: acrecelius@co.monroe.in.us
- 11. 2010-VAR-78 Buergler Buildable Area Variance from Chapter 804**
One (1) 0.48 +/- acre parcel in Richland Township, Section 22 at 3370 W
Sekiu CT. **Zoned ER.** Contact: rpayne@co.monroe.in.us

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- 12. 2010-VAR-79 Ernst Side Yard Setback Variance from Chapter 833**
13. 2010-VAR-80 Ernst Buildable Area Variance from Chapter 804
One (1) 0.45 +/- acre parcel in Bloomington Township, Section 18 at 4621 N Shelburne DR. **Zoned RS3.5.** Contact: rpayne@co.monroe.in.us
- 14. 2010-VAR-81 Yeshua Tabernacle of Praise Variance from Chapter 806-5(D) Surfacing Requirement.**
One (1) 10.66 +/- acre parcel in Bean Blossom Township, Section 30 at 9700 W Foster Fiscus RD.
Zoned AG/RR. Contact: dmyers@co.monroe.in.us
*****CONTINUED BY PETITIONER*****
- 15. 2010-VAR-82 Turner Minimum Lot Size Variance from Chapter 804**
One (1) 3.12 +/- acre parcel in Polk Township, Section 34 at 9750 S Dutch Ridge RD. **Zoned FR.** Contact dmyers@co.monroe.in.us

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OLD BUSINESS

- 1. 1812-VAR-40** **Patzner General Contractor Use Variance to Chapter 802**
One (1) 0.68 +/- acre parcel in Perry Township,
Section 28 at 5605 S Old State Road 37.
Zoned ER. Contact: jnester@co.monroe.in.us

BOARD ACTION: Clements introduced the petition.

STAFF ACTION:

Nester Jelen: Sure, thank you Margaret. I will run through this one fairly quickly. I think most of you have heard it by now. This is a Use Variance request and some of the history on this site is it actually stated in December of 2018. It has been continued to give the petitioner, Mr. Patzner, a little bit more time to move the Riverway Plumbing business from an Estate Residential zoned property to a Business zoned property, which he is in the process of doing. To date the petitioner is on the call tonight he states that he is 80 percent finished. I just wanted to give you a visual of where the property is located is this red triangle and where he will be moving the business to that is actively being built is the yellow square. So, he is moving right across the street and hopes to be completed as soon as possible but right now before you is a Use Variance for a General Contractor Use in a Residential zone. Again, here we are off South Walnut Street, Old State Road 37, Estate Residential zoning. The petitioner has an accessory structure and then a home on the property that is rented full time and in the Comprehensive Plan Mixed Residential. I am pulling in a pictometry view of the property from April 20, 2020 so you can kind of tell this is a little bit more than a home based business. It is definitely a General Contractor Use that would not be permitted at the site. What we are hoping to do here is get a decision. It could be approve or deny are the choices. Staff at this point is still keeping with the recommendation of denial. Do you have any questions?

RECOMMENDED MOTION

Deny the use variance (General Contractor) to Chapter 802 based on the findings of fact.

FINDINGS OF FACT: Use Variance

812-5 Standards for Use Variance Approval: In order to approve an application for a use variance, the Board must find that:

- (A) The approval will not be injurious to the public health, safety, and general welfare of the community:**

Findings:

- Approval of the use variance would allow the petitioner to continue the commercial use in a residential zone without living on the property;
- The proposed use would require site plan approval in order to reach compliance;
- The property derives access from S Old State Road 37, which is a minor arterial (100' Right-of-way);
- The petition site is not located in FEMA Floodplain;
- There are no known karst areas on the lot;
- There is a rental home on the property;

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- Conclusion: The approval would not be injurious to the public health, safety, and general welfare of the community.

(B) The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner:

Findings:

- See Findings under (A);
- Approval of the use variance would permit a filing to obtain site plan approval for the proposed General Contractor use;
- The Monroe County Public Works Department and Monroe County Planning Department review site plans to confirm uses are meeting development standards on subject property in the County;
- The effect of the approval of the use variance on property values is difficult to determine;
- The neighboring uses on S Old State Road 37 are residential in nature;
- Conclusion: The use and value of the area adjacent to the property included in the variance may or may not be affected in a substantially adverse manner.

(C) The need for the variance arises from some condition peculiar to the property involved:

Findings:

- The use of “General Contractor” is not a permitted use in the Estate Residential (ER) zoning district, thus requiring the variance to be filed;
- The Estate Residential (ER) zone permits: Historic Adaptive Reuse; Accessory Apartments; Accessory Livestock; Guest House; Historic Adaptive Reuse; Home Based Business; Home Occupation; Residential Storage Structure; Single Family Dwelling; Temporary Dwelling; Two Family Dwelling; Cemetery; Governmental Facility; Religious Facilities; Telephone and Telegraph Services; Utility Service Facility; Water Treatment Facility; Bed and Breakfast; Real Estate Sales office Or Model; Park and Recreational Services; Private Recreational Facility; or Construction Trailer;
- The site has a single family dwelling, detached garage, and residential storage structure. The 2400 square foot residential storage structure is used as residential storage, office space, and commercial storage;
- There is no substantial evidence the property cannot be utilized under one of the permitted uses listed in the Estate Residential (ER) zoning district, including the permitted use as a long term rental property;
- Conclusion: The need for the variance does not arise from some condition peculiar to the property involved.

(D) The strict application of the terms of the Zoning Ordinance will constitute an unnecessary hardship if applied to the property for which the variance is sought; and,

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Findings:

- See Findings under (C);
- General Contractor is a medium intensity use not permitted on this Estate Residential (ER) zoned lot;
- General Contractor is permitted in in the General Business (GB), Light Industrial (LI), and High Industrial (HI) Zoning Districts per Chapter 802;
- The petitioner could file for a rezone;
- Conclusion: The strict application of the terms of the Zoning Ordinance will not constitute an unnecessary hardship if applied to the property for which the variance is sought.

(E) The approval does not interfere substantially with the Comprehensive Plan. Especially, the five (5) principles set forth in the Monroe County Comprehensive Plan:

- (1) Residential Choices;**
- (2) Focused Development in Designated Communities;**
- (3) Environmental Protection;**
- (4) Planned Infrastructure;**
- (5) Distinguish Land from Property;**

Findings:

- See Findings under (A);
- The Urbanizing Area Plan designates the subject site as Mixed Residential, which is described previously in this report. The neighboring properties are also zoned Mixed Residential in the MCUA plan. Though this area calls for commercial activity, the MCUA plan specifies neighborhood amenities and not particularly general contractor uses that are typically found in the industrial zones;
- The property does not have evident environmental constraints;
- The proposed use and its “Medium” intensity classification in this area is not consistent with the Comprehensive Plan’s designation;
- The structure being used as an office was permitted under a residential accessory structure. No new development is being proposed;
- Conclusion: The approval does interfere substantially with the Comprehensive Plan.

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 finding for ALL FIVE criteria in order to legally approve a use variance.

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QUESTIONS FOR STAFF - 1812-VAR-40 – Patzner

Sorensen: Jackie, I do have a question. Are you asking for a denial on the old property or the new property?

Nester Jelen: Good question Vicky. This is specifically on the current property that they are located that so let me just back up. So, that is this property which is zoned Estate Residential. They are already approved for Building Permits at the new property they are just not quite finished yet.

Sorensen: Ok. Thank you.

Guerrettaz: This is Bernie. So, basically what we are seeing here is Mr. Patzner is working on his new site and once the new site is developed out to where he can utilize it then his plan is to move from the red triangle to the yellow square. Is that correct?

Nester Jelen: That is correct.

Guerrettaz: Ok. That is all that I have got until I hear from the petitioner. Thanks Jackie.

Nester Jelen: Just to clarify, this has been continued for a time and not had a decision on it in part because once the petitioner moves and closes down the business use on the property the case will be moot.

Sorensen: I have another question, Jackie. As long as he remains at his current place while the new one is being constructed and we deny this, does he have to pay a fine or anything for being at the old place?

Nester Jelen: That is a good question. It has not been under enforcement as he has applied for a Use Variance to avoid any type of fines or anything.

Sorensen: Thank you.

Clements: Ok. Is Mr. Patzner present and would he like to address the Board of Zoning Appeals?

PETITIONER/PETITIONER'S REPRESENTATIVE – 1812-VAR-40 – Patzner

Patzner: Can you hear me?

Nester Jelen: Yes.

Patzner: I am here.

Clements: I would like to swear you in. Could you raise your right hand and do you swear to tell the truth and nothing but the truth?

Patzner: I do.

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Clements: Thank you. Ok, now please proceed with addressing the Board of Zoning Appeals.

Patzner: As of right now we are starting to paint the inside. The floor is going to be poured next week and that is finished floor. Basically we are going to be putting doors in and hopefully by December I am completely moved over. Like I said, COVID kind of put a little damper on the scheduling and lumber and windows. I thought I would be in November 1st but as everybody knows everything is being delayed. My garage doors are still 2-3 weeks out.

Clements: Ok. Does anyone have any questions for Mr. Patzner? Seeing none. Is there any members of the public who would like to speak in favor of the petition? If none, if there anyone here to speak in opposition to this petition? If there is none, we could entertain a motion or further discussion among the Plan Commission.

SUPPORTERS – 1812-VAR-40 – Patzner: None

FURTHER SUPPORTERS – 1812-VAR-40 – Patzner: None

REMONSTRATORS - 1812-VAR-40 – Patzner: None

ADDITIONAL QUESTIONS FOR STAFF – 1812-VAR-40 – Patzner: None

FURTHER QUESTIONS FOR STAFF - 1812-VAR-40 - Patzner

Guerrettaz: I can make a motion Madam Chair, if everyone is ok with that.

Clements: Thank you.

Guerrettaz: **In the matter of case 1812-VAR-40, Patzner General Contractor Use Variance to Chapter 802, located at 5605 South Old State Road 37, I move that we continue the petition to enable Mr. Patzner to continue construction of his facility.** Jackie, will we need to do this until he receives and ILP or how would you recommend that we make a continuous motion?

Nester Jelen: I would recommend that you pick a future BZA date similar to what we have been doing so that we are following the notice procedures. So, if you want to say how many months out, I can give you the BZA date.

Guerrettaz: Are we limited on the number of continuances that we can make on a petition?

Nester Jelen: My understanding is the Board of Zoning Appeals does not have a limit but the petitioner if they were to request it is limited to 3, so no, you can continue it.

Guerrettaz: Ok, so it there is no heartburn by the Board I would say that **we continue this to the April 2021 meeting and that should give him plenty of time construct and move his business over there and then his automatically dies.** That is my suggestion but I am open.

Nester Jelen: April 7th.

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Guerrettaz: **April 7, 2021, I move that we continue to that date.**

Sorensen: **Second.**

Clements: Mr. Wilson? I think you are still muted, Mr. Wilson.

Wilson: Got it. The motion is to continue petition 1812-VAR-40, Patzner General Contractor Use Variance to the April 7, 2021 BZA Meeting. A yes vote is a vote to approve the continuance. Margaret Clements?

Nester Jelen: Larry it is April 7th, just to clarify.

Wilson: Ok, Aril 7th, 2021. Again, a vote in favor is a vote to approve the continuance to the April 7, 2021 meeting. Margaret Clements?

Clements: Yes.

Wilson: Vicky Sorensen?

Sorensen: Yes.

Wilson: Bernie Guerrettaz?

Guerrettaz: Yes.

Wilson: The continuance is granted by a 3 to 0 vote.

The motion in case 1812-VAR-40, Patzner General Contractor Use Variance to Chapter 802, to continue the case to the April 7, 2021 BZA meeting, carried unanimously (3-0).

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OLD BUSINESS

2. 2009-VAR-61

Neal Residential Storage Structure Variance from Chapter 802

One (1) 2.7 +/- acre parcel in Bean Blossom Township, Section 22
at 8458 N Jenner DR. **Zoned AG/RR.**

Contact: tbehrman@co.monroe.in.us

BOARD ACTION: Clements introduced the petition.

STAFF ACTION: Petition was continued by staff.

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NEW BUSINESS

1. **2009-VAR-68** **Jason Hawkins Minimum Lot Size Variance from Chapter 804**
One (1) 4.0 +/- acre parcel in Benton Township, Section 4 at 7087 N
Tunnel RD. **Zoned FR.** Contact: rpayne@co.monroe.in.us

BOARD ACTION: Clements introduced the petition.

STAFF ACTION:

Payne: Good evening everyone. This is a Minimum Lot Size Variance request from Chapter 804. Can you guys hear me?

Clements: Yes.

Payne: Ok, thanks. Jackie, do you want to do to the next slide? Thank you. It is located on Tunnel Road and it is currently zoned Forest Reserve. There are slopes on this property mainly on the northwest corner of the lot but none where the petitioner is proposing to locate his garage. Let me back up and just say that the reason the petitioner is requesting a variance here is because he would like to build a new 36' foot by 36' foot garage just to the west and little south of the house. It is tiny but you can see it. Jackie is hovering over it right there. This parcel is designated Farm and Forest in the Comprehensive Plan. Here we have some site photos. It is the garage that you see in the picture on the left is existing and it has been the victim on a groundhog that has essentially rendered it useless due to the foundation damage that the groundhog has caused. So the petitioner has taken advantage of this opportunity more or less to construct a new garage that is slightly bigger than this existing one. Hopefully the groundhog won't make an appearance again. This is Tunnel Road, looking north and south. This is a picture of some of the damage that the ground hog has caused inside the garage and that is the very groundhog. The petitioner was able to take a picture of it. Obviously, he is not that concerned about the havoc he has reeked, but yes inside the garage is completely damaged essentially. This is the petitioner's letter to the Board of Zoning Appeals asking for this request. On the right we have got a site plan. Again, they are hoping to construct a new garage, 36' by 36'. They have 4 acres and what is required in this Forest Reserve zone is 5 acres, so this is the reason they are here tonight for a request the Minimum Lot Size Variance. Here is a map of surrounding parcels illustrating adjacent lots that also don't meet the minimum lot size. Based on our findings of fact, staff recommends that you approve the design standards variance to the Minimum Lot Size Standard in Chapter 804 of the Monroe County Zoning Ordinance based on the finding of fact. Are there any questions?

RECOMMENDED MOTION:

Approve the Design Standards Variance to the Minimum Lot Size standard in Chapter 804 of the Monroe County Zoning Ordinance based on the findings of fact.

FINDINGS OF FACT: Minimum Lot Size Standard

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

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- (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 petitioners to place a 36' x 36' garage on the petition site;
- The petition site is zoned Forest Reserve (FR) and is 4.00 +/- acres;
- The minimum lot size in FR zone is 5.0 acres;
- The parcel is not platted;
- There is no evidence that the building site is located on sensitive lands;
- There is no known karst on the property;
- There is no evidence that the building would obstruct a natural or scenic view;
- There are other parcels nearby that are under 5.0 acres in size (see Exhibit 3);
- 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 parcel is located on N Tunnel RD which is designated a minor collector;
- 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 proposed structure would meet all design standards for the Forest Reserve (FR) Zoning District, with exception to the minimum lot size standard;
- 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;

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(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 petitioners 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 A(1), A(2), and A(3);
- 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(1);
- There is no floodplain on site;
- The site is not located in the Environmental Constraints Overlay (ECO) Area;
- Conclusion: It would not promote conditions (on-site or off-site) 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 petitioners 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:

- See findings under (A)(1);

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- Conclusion: The approval, including any conditions or commitments deemed appropriate, is the minimum variance necessary to eliminate practical difficulties in the use of the property;

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 – 2009-VAR-68 – Hawkins

Clements: Are there any questions of staff? Is the petitioner present and would the petitioner like to address the Plan Commission? Jackie, do you see if anyone is present?

Nester Jelen: I think that this person Highway Hawkins, is that you Jason? Can you hear us? I am not sure? Tech Services do you know if this person promoted to panelist has auto capabilities?

Tech Services: It looks like there auto is enabled but it may be that zoom its recognizing the practical mic that they are using.

Nester Jelen: Ok.

Payne: That might have been my petitioner calling.

Nester Jelen: Do you know what their phone number is Rebecca? Sorry, this is kind of a new format for us so we are trying to learn how to promote it.

Payne: I think this is the petitioner, just one second.

Nester Jelen: Definitely a sign of 2020.

Guerrettaz: I can attest to the damage that a groundhog can do on the foundation of a building like that. I don't think I would have used a camera to get that shot so to speak.

Nester Jelen: While we are waiting for Rebecca, Tech Services, can you explain for people that are attendees on this zoom call how they can alert us that they wish to speak?

Tech Services: The best way is to do the raised hand feature if you are on the app or the web browser something like that. It should be either an icon in the top left or at the bottom it just says raise hand and it will alert us that the person needs to talk.

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Nester Jelen: Ok, thank you. Rebecca?

Payne: The petitioner is saying that he is calling into the number but he is getting notification that he is muted. So, he is not able to log in.

Nester Jelen: What is the number?

Payne: Do you see 812-322-0230

Nester Jelen: I see 322-0931.

Payne: 812-825-5347 is the number that he is calling from.

Nester Jelen: I am going to try this number and see what happens.

Guerrettaz: Can he call you, Rebecca and you put him on speakerphone?

Payne: Yeah, I can do that. I have him on the line right now.

Clements: Oh, great.

Payne: You want me to try to that way? Hey Jason, we are going to try this work around where I put you on speakerphone so that you can just sort of speak to the Board this way instead of dialing in or logging on. Does that sound ok?

Hawkins: That sounds great. Thank you.

PETITIONER/PETITIONER'S REPRESENTATIVE –2009-VAR-68 – Hawkins

Payne: Ok. Can everybody hear him?

Clements: Yes. Mr. Hawkins, I would just like to swear you in. Do you swear to tell the truth, the whole truth and nothing but the truth?

Hawkins: Yes.

Clements: Thank you. Ok, please proceed with what you would like to state to the Board of Zoning Appeals.

Hawkins: This property has been in my family for like 3 generations and this garage was built back in the early 50's. We are just basically wanting to change the size of it just by a few feet. I have tried to repair the damage over the last 4 or 5 years. It is beyond repair at this point and we are just wanting to replace it with a new garage to be able to utilize the space on the property.

Clements. That makes sense. Is there anyone else that would like to speak in favor of this request who is present or is there anyone that would like to speak in opposition to this request? Jackie, if

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you see no one, then we could entertain a motion?

Guerrettaz: I can do that.

Clements: Thank you.

SUPPORTERS –2009-VAR-68 – Hawkins: None.

FURTHER SUPPORTERS - 2009-VAR-68 – Hawkins: None

REMONSTRATORS - 2009-VAR-68- Hawkins: None

ADDITIONAL QUESTIONS FOR STAFF – 2009-VAR-68 – Hawkins: None

FURTHER QUESTIONS FOR STAFF –2009-VAR-68 – Hawkins

Guerrettaz: **In case number 2009-VAR-68, Jason Hawkins Minimum Lot Size Variance from Chapter 804, located at 7087 North Tunnel Road, I move that we approve the variance for Minimum Lot Size standard in Chapter 804, subject to the staff report and the findings found there in.**

Sorensen: **Second.**

Wilson: The motion is on 2009-VAR-68, Jason Hawkins, Minimum Lot Size Variance. A yes vote is a vote to approve the granting of the development standards variance. Vicky Sorensen?

Sorensen: Yes.

Wilson: Bernie Guerrettaz?

Guerrettaz: We asked for public comment correct?

Clements: Yes.

Guerrettaz: Yes.

Wilson: Margaret Clements?

Clements: Yes.

Wilson: The variance is approved by a 3 to 0 vote.

The motion in case 2009-VAR-68, Jason Hawkins Minimum Lot Size Variance from Chapter 804, in favor of approving the variance, carried unanimously (3-0).

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NEW BUSINESS

2. 2009-VAR-69

Sowders Side Yard Setback Variance from Chapter 804

One (1) 0.45+/- acre parcel in Perry Township, Section 27 at
1750 E Vera LN. **Zoned SR.** Contact: tbehrman@co.monroe.in.us

BOARD ACTION: Clements introduced the petition.

STAFF ACTION:

Nester Jelen: I am going to cover this one since Tammy is on vacation. I want to make clear quickly that the agenda listed the address slightly incorrectly. It is 1750 East Vera Lane. There is no West Vera Lane in the county so I think we are ok.

Clements: Thank you for letting us know.

Nester Jelen: This property is requesting a variance to have an After-The-Fact Permit for a Lean-to that is in the Side Setback become conforming by use of a variance and then the Lean-to is currently is about a half a foot off of the property line. This is the location here off of South Fairfax and Vera Lane. You have the zone here as Suburban Residential. In the Comprehensive Plan you have it as Suburban Residential as well and then you have kind of a sloped area map here. The property is fairly flat and the area that we are discussing here is this western property line. Here are some site photos. The property owner did reach out and get a survey from Phil Tapp so they are sure the setback is about a half a foot and lean-to we are talking about in this image is right here where the curser is. Here is aerial imagery of the same shot from 2006. The petitioner added a lean-to in the time period and when they applied for other building permits we just verify that all other permits on the property had been received and so we were able to issue 2 after-the-fact for these extensions of the property but this lean-to was unfortunately in the setback. They have since removed this carport, so this is the only reason we are discussing this case tonight at the BZA. It is a 7' by 21' lean-to, just barely over the 120' square foot trigger for needing a permit. It is about a 143' square feet if I remember correctly. Another aerial image of the property. You can see that there is a neighbor fairly close by on the west side. The petitioner's letter and then also their site plan. On the bottom right you see that there was as I mentioned a survey done by Phil Tapp and they are showing an existing garage a half a foot east of the line and it is required to be at least 5 feet. This property is in a platted subdivision. There are no easements but it is the zoning setbacks here. Staff is recommending denial based on findings of fact, specifically Finding B (1) and Finding C. I will take any questions that you might have.

RECOMMENDED MOTION:

Staff recommends **Deny** the side yard setback design standards variances based on the findings of fact specifically Finding B(1) and Finding C.

FINDINGS OF FACT: Side Setback 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:

Primary:

- Approval of the variance would allow petitioner to obtain an after the fact permit for a 7' x 21' lean-to attached to a garage that will encroach 4.5' into a 5' setback;
- There are no designated scenic areas nearby;

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:

Primary:

- See Findings A(1);
- There is not a platted easement in the location of the unpermitted lean-to;
- A platted 20' utility easement exists on the property on the southern property line and is a part of the 10' rear setback;
- The petitioner has a shed in the rear setback / easement but staff is unable to confirm the date of installation of this structure that may have existed prior to 1997 establishing the structure as pre-existing nonconforming;
- The property uses septic but the location of the septic system was not provided by the petitioner on the site plan;
- The petitioner did not provide any findings for staff nor provide any reason for the use of the lean-to;

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:

Primary:

- See Findings A(1);
- The property is zoned Suburban Residential (SR);
- The SR zone requires a 5' setback for structures;
- The lean-to is 0.5' from the property line which is a 4.5' encroachment into the setback;

DRAFT

- The use is residential with surrounding areas being residential;
- The Comprehensive Plan designates this area as MCUA Suburban Residential;
- The petitioner's neighbor to the west called Planning staff to express their dislike of the lean-to structure so close to the property line;
- An analysis using aerial imagery was used by staff along E Vera Dr and did not see any obvious encroachments into the side yards, however, the property lines depicted on the parcel layer are not always accurate;

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:

Primary:

- See Findings A(1), A(2), and A(3);
- The purpose of the setback is to ensure adequate light, air, privacy for adjacent properties; to provide access to any structure for maintenance and emergency services; and to preserve the general character of zoning district;
- If the variance is granted a 0.5' side yard setback exist for structure;
- Sufficient setback would not remain after the variance to allow maintenance for the garage's lean-to;
- The rear setback has a structure already in it to hinder access to adjacent properties.

Conclusion:

- Approval of the variance would 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:

Primary:

DRAFT

- See Findings B(1);
- There are gutters on the lean-to's roof to direct water to a drain on the north end of the structure during reasonable precipitation events;
- The lean-to is approximately 5.5' from the western neighbor's residence which has a low roof line in this location;
- Staff has not determined if the lean-to meets building / fire code design for the area near the adjacent residence;
- The use of the lean-to is unknown;

Conclusion:

- There are 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:

- There are not practical difficulties deemed appropriate to grant this side yard setback variance;
- The petitioner built the 7'x 21' lean-to without permits and staff considers this a self-created hardship;
- The petitioner has a 1430 sf detached garage and 480 sf shed on the property and the additional 147 sf lean-to may or may not add a significant amount of storage to this 0.46 acre lot;
- The lean-to could be relocated to another part of the property (ie eastern side of the garage) that meets Chapter 804 Buildable Area standards;

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 – 2009-VAR-69 - Sowders

Clements: Do any members of the Plan Commission have questions for Ms. Nester?

DRAFT

Guerrettaz: I have a quick one Margaret. Has the adjacent neighbor on the side of the lean-to have they, I didn't see anything in the packet but I may have missed any sort of letter or any remonstrance against?

Nester Jelen: That is a good question Bernie. I do believe there might have been some call in questions but no formal remonstrance and as it relates to just drainage questions through here. But there are no easements like drainage easements formally on this property but as you know side setbacks can be used over time as a good way to get water from the street to the back of the property without hitting anyone's foundation.

Sorensen: My question, if it's ok, is he asking for permission to keep the lean-to or if the lean-to is taken away do we approve the setback?

Nester Jelen: Good question Vicky. So, if the lean-to, let's say the variance is denied, they will be required to remove the lean-to and then there won't be a side setback encroachment. So, the request is to keep the lean-to.

Sorensen: Ok, thank you.

Clements: Ok, thank you. Mr. Sowders are you presents and would you like to address the plan Commission? If so, please raise your hand on the zoom to be recognized by the BZA.

Nester Jelen: I am going to quickly check the case file and see if I can find the petitioners number and they may be on the few calling in. Just a moment. I don't see them on the call.

Clements: Ok. Is there any member of the public that would like to speak in favor of this petition? If there is none, is there any member of the public that would like to speak in opposition to the petition? We can come back and discuss among ourselves or entertain a motion.

Sorensen: I have another question, Margaret. Is he willing to tear down the lean-to if? Do you know what he uses it for?

Nester Jelen: That is a good question Vicky. As part of the requirement for building permits if we see anything that doesn't have a permit and we and request that it receive an after-the-fact, if it doesn't apply for a demolition permit we can do one of two things; we can withhold the other permits on the property or we start an enforcement case and basically request that alleviate the need for an enforcement case by applying for a demolition permit for the lean-to.

Sorensen: Thank you.

Guerrettaz: Well, I am inclined to continue this only because the petitioner is not here for whatever reason and we have already experienced that this evening on another petition. I think it might serve everybody better to give him an opportunity to be here and at least more members of the BZA attending and I don't fault anybody for not being here but I think it might be right for a continuance.

Clements: I think that is a great idea.

DRAFT

Guerrettaz: Is that an invitation?

Clements: Yes, please.

PETITIONER/PETITIONER'S REPRESENTATIVE – 2009-VAR-69 – Sowders: None

SUPPORTERS – 2009-VAR-69 – Sowders: None

FURTHER SUPPORTERS – 2009-VAR-69 – Sowders: None

REMONSTRATORS - 2009-VAR-69 – Sowders: None

ADDITIONAL QUESTIONS FOR STAFF – 2009-VAR-69 – Sowders: None

FURTHER QUESTIONS FOR STAFF – 2009-VAR-69 – Sowders

Guerrettaz: **In the matter of 2009-VAR-69, Sowders Side Yard Setback Variance from Chapter 804, located at 1750 East Vera Lane, I move continuing the petition until the December 2, 2020 Board of Zoning Appeals Meeting.**

Sorensen: I **second**.

Wilson: The motion is to continue petition 2009-VAR-69, Sowders Side Yard Setback Variance from Chapter 804. The motion is to continue to the December 2, 2020 BZA meeting. A vote in favor is a vote to grant the continuance or to continue the matter. Bernie Guerrettaz?

Guerrettaz: Yes.

Wilson: Margaret Clements?

Clements: Yes.

Wilson: Vicky Sorensen?

Sorensen: Yes.

Wilson: The continuance is approved by a 3 to 0 vote.

The motion in case 2009-VAR-69, Sowders Side Yard Setback Variance from Chapter 804, in favor of continuing the petition to the December 2, 2020 Board of Zoning Appeals Meeting, carried unanimously (3-0).

DRAFT

NEW BUSINESS

3. 2009-VAR-70

Jared Huff Minimum Lot Size Variance from Chapter 804

4. 2009-VAR-71

Jared Huff Side Yard Setback Variance from Chapter 804

One (1) 1.27+/-acre parcel in Bean Blossom Township, Section 29 at 7525 N Stinesville RD. **Zoned AG/RR.** Contact: tbehrman@co.monroe.in.us

BOARD ACTION: Clements introduced the petition.

STAFF ACTION:

Nester Jelen: I will go ahead and take this one too, Margaret. Just a summary of the request here for an accessory structure the minimum lot size. This is Agricultural/Rural Reserve which requires 2 and half acres and the lot size is only 1.27 acres. The side yard setback for the zoning is 15' feet and the request side setback is 5' feet. So there are so some considerations on this lot which we will get into. It is a corner lot which says there is only a front and side setback. The front setback can be quite restrictive in many areas and then the proposed accessory use structure is less 15' in height, so there is a provision that they can have a smaller rear setback if they were able to have one in this zone of only 5' feet, so just keeping that in mind, so well as future septic locations. Here is the property location in Bean Blossom Township. As I mentioned the zoning is Agricultural/Rural Reserve here on the corner of the 46 and Stinesville. The Comprehensive Plan has this as Farm and Forest. The property site is fairly flat and where I am showing my mouse is the relative location of their proposed structure. As you can see from this map there are quite a few lots in this area that don't meet the 2 and half acre minimum. There are some petition site photos of the site. With the orange arrow showing you a view of where the proposed accessory structure would be located and then also these red corner markers as well just showing you there is an existing buffer of landscaping. Again, more photos showing the accessory structure they have it staked out here, and then some aerial photos to give you an idea of where we are looking on the property. This green pin is just to show you the property not where they are going to put the structure. The structure is more like where the cars are parks. Because it is a corner lot they have front setbacks on all of the streets and this has to be a side setback. As you saw on the beginning, if this were a regular shaped lot and there was a rear setback there could be an accommodation in the zoning ordinance to allow for just a 5' foot setback but because it is considered a corner lot and it is a side setback it is 15' feet is the required setback. Here is the petitioner's letter which is in the packet as well and then the petitioner's submitted site plan, 32' by 40' accessory structure, with the location of the existing septic site, which leaves the petitioner with very few choices in terms of where to put the accessory structure that would be meeting this setback and also some tree consideration as well. So, staff did just do a check on the measurement of the height, making sure that it was under the 15' feet and it measured out to about 14 and half feet. Here is the Health Department's kind of redrawing of the septic system as well. The staff's recommendation is this case is to approve the Minimum Lot Size Standards from Chapter 804 as well as approve the Side Yard Setback from Chapter 804, based on the findings of fact. I will take any questions.

RECOMMENDED MOTION:

Approve the both the Design Standards Variance to the Minimum Lot Size standard in Chapter 804 of the Monroe County Zoning Ordinance based on the findings of fact.

Approve the both the Design Standards Variance to the Side Yard Setback standard in Chapter

804 of the Monroe County Zoning Ordinance based on the findings of fact.

FINDINGS OF FACT: Minimum Lot Size Standard

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 further develop a 1.27+/-acre lot with a 32'x40' pole barn;
- The site has a 2994 sf home with attached garage built in 1950;
- There are no designated scenic areas adjacent to the petition site;
- 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 parcel obtains ingress/egress from N Stinesville RD;
- The petitions site maintains frontage on both N Stinesville Rd (major collector) and maintains frontage on W State Road 48 (major arterial);
- The site uses septic system and the petitioner has mentioned in their letter the need to preserve space for a future septic location;
- The home was built in 1950;
- 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 lot and surrounding area is zoned Agriculture Rural Reserve (AG/RR) with a minimum lot size requirement of 2.5 acres;
- There are approximately seven parcels in a quarter square mile that do not meet the lot size requirement;
- The proposal would meet all other design standards other than the side yard setback;
- 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 A (1);
- Nearby uses are residential, agriculture and business to the south;
- 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 (1);
- There is no FEMA floodplain on site;
- The petition site drains to the southwest;
- The neighboring residence and pool to the north are approximately 130' from the proposed pole barn location;
- The neighbor to the north has installed many conifers to screen their southern lot line;
- Conclusion: It would not promote conditions (on-site or off-site) 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:

- If the variance is not granted, the expansion cannot continue and must be removed;
- The strict application of the ordinance would not allow any further development on the parcel without a minimum lot size variance;
- Petitioner has applied for two variances, which is the minimum necessary in this case in order to further build the proposed 324sf addition on the lot in the existing home.

FINDINGS OF FACT: Side Setback 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:

Primary:

- Approval of the variance would allow the petitioner to construct a 32'x40' pole barn 10' into the 15' required side yard setback and be 5' off the property line;
- The site has a 2994 sf home with attached garage built in 1950;
- There are no designated scenic areas adjacent to the petition site;

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:

Primary:

- See Findings A(1);
- The parcel obtains ingress/egress from N Stinesville RD;
- The petitions site maintains frontage on both N Stinesville Rd (major collector) and maintains frontage on W State Road 48 (major arterial);
- The site uses septic system and the petitioner has mentioned in their letter the need to preserve space for a future septic location;
- The home was built in 1950;

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:

Primary:

- See findings under A(1) and A(2);
- The lot and surrounding area is zoned Agriculture Rural Reserve (AG/RR) with a side yard setback requirement of 15’;
- The petitioner is requesting a 5’ side yard setback;
- The proposal would meet all other design standards other than the minimum lot size;
- According to the Building Permit Application the structure will be just under 15’ in height;
- An accessory use building or structure equal to or less than 15 feet in height shall be permitted within five (5) feet of rear property line(s).
- This property is a corner lot and does not have a rear yard;
- Several residential zones will allow a detached garage under 15’ in height to be within 5’ of the side yard setback;

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:

Primary:

- See Findings A(1) and A(3);
- The purpose of the setback is to ensure adequate light, air, privacy for adjacent properties; to provide access to any structure for maintenance and emergency services; and to preserve the general character of zoning district;
- Sufficient setback would remain after the variance to allow maintenance;

DRAFT

- Sufficient setback would remain after the variance to allow for access for emergency services between the two properties;

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:

Primary:

- There is no FEMA floodplain on site;
- The property drains to the south and west;
- The neighbor to the north has many established evergreens on their property to buffer the home and pool from the view of the proposed pole barn;

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:

- The petitioner has expressed in their letter the setback encroachment would be to allow for extra space to the west of the home to allow for a replacement septic system in the future associated with the 1950's built home;
- Petitioner has applied for two variances, which is the minimum necessary in this case in order to further build the proposed pole barn on the lot in the proposed location.

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 – 2009-VAR-70 & 71 – Huff

Clements: Are there any questions of Jackie? If there are none, is Mr. Huff present or your representative and would you like to address Board of Zoning Appeals?

Nester Jelen: I see one new caller on the call so just a reminder that if you wish to speak, use the raise your hand function in the screen. Again, I am going to try and multi-task here and see if I can find the petitioner's phone number.

Guerrettaz: It might be a good idea, just a suggestion on these petitions, hopefully we won't be zooming for the rest of our lives, but if we are continue in the short-term, maybe recommend the petitioner email the staff member or the planning office that they are going to be on the line and their phone number or whatever device they are using, just a suggestion.

Nester Jelen: Yes. That would be a great idea. I am worried that since I am covering this one for Tammy they may not have realized that. I think I see this person's number so I am going to allow them to speak. Jared Huff, can you hear us?

PETITIONER/PETITIONER'S REPRESENTATIVE – 2009-VAR-70 & 71 – Huff

Nester Jelen: Tech Services, I think it is the 227, sorry 272-7674 and if I ask them to unmute they have to press unmute on their side is that correct?

Tech Services: That is correct. I also hit it asked them to unmute so if they don't respond, oh, it looks like they just unmuted.

Nester Jelen: Ok. Jared Huff, can you hear us? Alright, I am not sure what the audio issue is but if you can hear us. I am not sure if there is anything that we can do or not.

Clements: Do you have telephone that you could dial that number?

Nester Jelen: Sure. Ok, give me just one second.

Guerrettaz: I was going to tell him to blink twice, Margaret.

Clements: and clink their heels.

Huff: Hello.

Clements: Mr. Huff?

Huff: Yes, it's me.

Clements: Thank you for attending tonight's meeting and thank you for your patience while we manage this new technology. I am sorry, could you please raise your right hand and do you swear to tell the truth and nothing but the truth?

DRAFT

Huff: Yes.

Clements: Thank you. We are anxious to hear what you might say to the Board of Zoning Appeals regarding this request.

Huff: I really don't know what to say. This is the first time I have done anything like this. It is kind of confusing. I just really appreciate it. I need the extra space for just hobbies basically.

Clements: You don't have to go into too much detail we just wanted to give you an opportunity to make any additional requests that weren't presented by the staff during the presentation.

Huff: Ok the height of that, does that matter? I heard you guys talk about that 15 foot.

Clements: Well, that was a good thing that it was under 15 feet. I think that is ok and if you feel comfortable with the way the case was presented, I am obliged to request or ask if anybody else that is a member of the public who would like to address the Board of Zoning Appeals about this case?

Huff: I think it went great.

Clements: Thank you so much and thank you for attending tonight.

Huff: Thank you.

Clements: Is there any other member of the public who would like to address the Board of Zoning Appeals either in favor or in opposition to this request?

Nester Jelen: I am not seeing anyone Margaret.

Clements: Thank you. Well, in that case I would entertain a motion.

Guerrettaz: I have got a quick comment. The house was built in 1950. Is that correct, Jackie?

Nester Jelen: Yes, I believe so, yes.

Guerrettaz: And it is 1.27 or 1.3 acres, so we have got a parcel that was created and a house built basically before the current zoning ordinance and for everything eels for title purposes it ended as a good thing. This is probably a good example where a Hearing Officer would be useful and could probably make a determination on a case like this without much ire. Of course, a Hearing Office always has the opportunity to kick it to the BZA or wherever it needs to go. So, with that, I can make a motion.

Clements: Thank you.

SUPPORTERS – 2009-VAR-70 & 71 – Huff: None

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FURTHER SUPPORTERS – 2009-VAR-70 & 71 – Huff: None

REMONSTRATORS - 2009-VAR-70 & 71 – Huff: None

ADDITIONAL QUESTIONS FOR STAFF – 2009-VAR-70 & 71 – Huff: None

FURTHER QUESTIONS FOR STAFF – 2009-VAR-70 & 71 – Huff

Guerrettaz: Ok, I am going to do both of these together. **In case number 2009-VAR-70 and 2009-VAR-71, Jared Huff Minimum Lot Size Variance from Chapter 804 and Jared Huff Side Yard Setback Variance from Chapter 804 respectively, located at 7525 North Stinesville Road, I move that we approve those 2 variances based on the findings of fact found therein.**

Sorensen: **Second.**

Clements: Mr. Wilson?

Wilson: The motion is to approve both 2009-VAR-70 and 2009-VAR-71, the Jared Huff Minimum Lot Size and Huff Side Yard Setback Variance request respectively. A vote in favor is a vote to approve both development standard variances. Margaret Clements?

Clements: Yes.

Wilson: Vicky Sorensen?

Sorensen: Yes.

Wilson: Bernie Guerrettaz?

Guerrettaz: Yes.

Wilson: Both variances are approved by a 3 to 0 vote.

The motion in cases 2009-VAR-70, Jared Huff Minimum Lot Size Variance from Chapter 804 and 2009-VAR-71, Jared Huff Side Yard Setback Variance from Chapter 804, in favor of approving the variances, carried unanimously (3-0).

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NEW BUSINESS

- 5. 2009-VAR-72** **Rogers & Country Club Sign (Digital) Variance to Chapter 807**
6. 2009-VAR-73 **Rogers & Country Club Landscaping Variance to Chapter 830**
One (1) 0.26 +/- acre parcel in Perry Township, Section 17 at 2801 S
Rogers ST. **Zoned LB.** Contact: jnester@co.monroe.in.us

BOARD ACTION: Clements introduced the petition.

STAFF ACTION:

Nester Jelen: This is 2 variance requests as you mentioned. The first for Digital Signs, which are prohibited under the Sign Ordinance and the second which is for the Landscaping requirements that are required for commercial development of property. Just a quick summary of the requests here. The petitioner had previously come to the BZA for a digital sign request and they have actually been granted 4.75 square feet of digital signage and they recently wanted to increase that to 16.9 square feet so in order to so they have to come back for another variance. Additionally the landscaping here is pretty small, as you probably know it is about a quarter of an acre and so typically with commercial sites in the county we require a certain width where landscaping can fit comfortably. But because of their previous variances to shore up the size of the area devoted to bufferyards about 2 feet and 10 feet, they are running out of room physically to plant enough plants that are required. So they have 786 D value, which is equivalent to about 99 shrubs and what they are missing is if you were to calculate it out in just shrubs, 137, so they are a little less than half the required landscaping on this site. This site is Country Club and Rogers. The zoning is Limited Business. The old building here is no longer but the site is very flat and has access to utilities and is at the intersections with both ingress/egress out of Country Club and Rogers. The Comprehensive Plan has this area as Mixed Residential. I wanted to show quickly the site plan for the signs that they proposing and then also the site plan for the landscaping that they missing. The focus here on D1, D2 and D3, those are the 3 locations for the digital signs. Signs are permitted to be located at these locations but the question and the matter for the BZA tonight is the digital signs, that is copy that can change based on gas prices is what is being considered tonight, so diesel or regular gas pricing. I have some schematics here for you just to show you what those signs would look like, what they are proposing and collectively they add up to over 16 square feet of signage. This side is kind of facing the south side of the building but you are looking north and this is the first sign location. This side would be catching the people that would be going west on Country Club, so this is the east side of the building and then you have the facing the intersection of Country Club and Rogers is the sign being proposed. Now I will mention without getting too much into the sign ordinance but a sign is permitted to be located here it is just the digital portion that is in question. I will also point out, previously this was a sign over here on the right, the Mobil sign, this was what was requested and approved for the 4.75 square feet. So they have since switched to a different sign company all together and are now requesting an increase. Here you have the landscaping that is missing. Along the eastern side of the property is the bufferyard and then along the south side is the bufferyard and the bioretention area so you will see in the packet we have comments Terry Quillman and Connie Griffin of the Stormwater Department and they are very sure that landscaping does need to be located here as part of the filtration to catch any oils and grease leaving the site. I also have a yellow square here. There are a few plants missing here. But primary it is on this east side and this south side. I will note from a perspective of staff, for the amount of landscaping that needs to go in, we would be requiring the petitioner to take up some

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the asphalt and putting and new landscaping because it physically won't fit and the other requirement is that it has to be kept in perpetuity. Just a few site photos here. The parking island facing Rogers this one did have all the landscaping that was needed. This photo on the right is the 2 foot landscaping that was missing, some landscaping and I also have a shot kind of looking toward the Country Club area. Lastly, the bioretention area as I understand it has only been planted with grass. It does have this rip rap to kind of catch this water that runs off the site but I did include both Terry and Connie's comments that they would like to see landscaping located in this area. Staff is recommending denial for both of these variances requests based on the findings and I can take any questions you may. This is more of an usual case for the BZA so I am happy to answer your questions and I think the petitioner is also here but I will double check that.

RECOMMENDED MOTION:

2009-VAR-72: (B) DENY the Design Standards Variance for the changeable copy (digital) sign requirement in Chapter 807 of the Monroe County Zoning Ordinance, based on the findings of fact, specifically under (A) 3.

2009-VAR-73: DENY the Design Standards Variance for the bufferyard landscaping requirements in Chapter 830-7 and 830-9 of the Monroe County Zoning Ordinance, based on the findings of fact.

FINDINGS OF FACT – 2009-VAR-72 – SIGN REQUIREMENTS: Prohibition of Changeable (Digital) Copy

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 petitioner is asking for one variance from Chapter 807: Prohibition of changeable (digital) copy;
- The petitioner received a variance previously to allow for signs to be located only 5' from right-of-way rather than the required 10 feet;
- The petitioner also previously received a variance for 4.75 sq ft of digital signage on the site;
- The property is not located in the Environmental Constraints Overlay or floodplain;
- The sign locations are proposed to be located on the side of the buildings, which is preferred per the Comprehensive Plan for this 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:

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- See findings under (A1);
- The location of the building was previously granted a variance. The choice to locate the signs on the wall is recommended under the Comprehensive Plan for this area.
- The petitioner can place up to 103 sq ft of signs on the property per Chapter 807. The only prohibited sign type being requested is the digital signs;
- The diesel sign that is close to the right-of-way on Rogers will be required to be removed via enforcement;
- Comments/concerns by the County or City Engineers have been resolved;
- 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 (A1 & A2);
- Digital signs are prohibited in all zones in the County;
- Per the zoning ordinance, the petitioner can add up to 103 sq ft of signage on this property as long as the signage meets requirements in Chapter 807;
- The petitioner previously received a variance for 4.75 sq ft of signage. Additional signage near a residential area does depart with the Comprehensive Plan, which states “It may be appropriate for neighborhoods to include gateway features and signs, but these should be used sparingly and in strategic locations, rather than for individually platted subareas;”
- Conclusion: The character of the property included in the variance **would 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 (A);

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- Whether the petitioner receives this variance will not preclude the ability for the petitioner to place signs in the locations proposed, however the digital sign component would be limited to 4.75 sq ft;
- 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:

- Digital signs are believed to distract drivers, however the location on the building will not cause physical disruption to site distance along this area. The location of the signs would be facing the intersection and opposing traffic moving north/south/east/west;
- 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:

- The petitioner is permitted to locate the proposed signs, limiting the digital sign size to 4.75 sq ft, without additional variance approvals;
- The petitioner can advertise the price of gasoline using the currently allocated 4.75 sq ft, which was previously proposed;
- Conclusion: There **does not** appear to be practical difficulties in the use of the property as the nature of the business does require digital copy to display changing gasoline prices;

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.

FINDINGS OF FACT – 2009-VAR-73 – LANDSCAPING REQUIREMENTS:

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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 maintain the current landscaping and avoid new plantings;
- The site is 0.26 acres;
- The surrounding zones are residential and institutional/public;
- The use of the site as a gas station with residential uses to the east and south does require additional landscaping as a buffer;
- Landscaping helps to filter out oils and grease that may run off the parking lot and into the landscaped areas;
- Additionally, a landscape buffer can assist in mitigating the impact of lights, noise, etc. leaving the site and entering the residential sites nearby;
- The site is not located in the ECO area or in the Floodplain;
- 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:

- The petitioner would be required to redesign part of the parking lot area to plant the remaining 1096 D value due to the size constraints of the planting area;
- Plantings must be maintained in perpetuity per Chapter 830;
- The petitioner did not submit findings for the request;
- 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:

- The parcel was rezoned in February 2017 from Commercial Limited (CL) to Limited Business (LB);
- The property received several other variances, including a previous variance to lessen the bufferyard width. At that time, the petitioner submitted a site plan showing that

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landscaping could be met per the certified engineer site plan;

- There is an opaque fence separating the gas station from the neighbors on the south and the east;
- The landscaping requirement is based on the proposed intensity of use and the surrounding uses, not necessarily based on the zoning;
- The properties to the north and east are in the City of Bloomington's jurisdiction;
- The surrounding uses in the area are residential to the south and north along S Rogers, institutional to the west, and a large commercial/industrial area to the east on Country Club;
- The property received an Improvement Location Permit for construction in 2017;
- 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:

- The petitioner currently has about 99 plants on the 0.26 acre site. The additional landscaping would require that
- 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:

- The petition site adjoins single family residential lots on the east and south side. The landscape buffer is meant to reduce impacts, such as light and noise, leaving the site;
- The fence along the east side of the property line will assist with screening the neighbor from light and noise from this property;
- The bioretention area captures grease and oil and currently contains only grass;
- Conclusion: It **would** promote conditions detrimental to the use and enjoyment of other

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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:

- Conclusion: There **does not** appear to be a practical difficulty in that the petitioner could redesign the parking lot to meet the necessary planting requirements.

QUESTIONS FOR STAFF – 2009-VAR-72 & 2009-VAR-73 – Rogers & Country Club

Clements: Thank you. Do any members of the Board have any questions for Jackie?

Guerrettaz: Jackie, quick on here. Can you zoom back to the site plan you had with the yellow and red, excuse me polygons or rectangles? What was the last variance that we granted them from? Describe the last for me please so I can look at the map.

Nester Jelen: Sure. That is actually a good plan. I will actually go ahead and describe to you all the prior variances on the site.

Guerrettaz: Sorry about that but that is tied directly into what Terry and Connie was talking about in my mind.

Nester Jelen: No that is ok. Yeah. Exactly. They received a front setback variance for the location of the building and that was in June of 2017. They received a landscape bufferyard width that included this east line and this south line and that was in June 2017 and later of July of 2019 for this eastern side because emergency vehicles if a car is parked at this pump and another car were to pass a third car would not be able to make it. So they were concerned after a trip by the fire department that there wasn't physically enough room here for emergency vehicles if there were an issue. They have received a variance for the minimum number of parking spaces needed, so they are supposed to have 7 spaces and they have 6 spaces that was in June of 2017. They received a digital sign 4.75 square feet and then also they were allow to place a digital sign within 5 feet in the property line instead of the required 10 feet. Those were both in June of 2019.

Guerrettaz: Back to the bufferyards, that was a width variance but not a landscape variance. Is that correct?

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Nester Jelen: Yes. At that time staff did request that the petitioner consider applying for a variance for the landscaping but they stated that they could meet the requirement and they actually submitted engineered plan sets that showed that showed they were able to meet the landscaping requirements. 2019, to now they have located in the building we have issued temporary permits occupancy at the site and just kind of extended that and this is kind the last effort to try and close out the site officially and these are the 2 remaining things.

Guerrettaz: Can you show the photo that shows the south property line?

Nester Jelen: Sure.

Guerrettaz: Do we know if the elevation off of that parking drains to the east, as I am looking at the photo to the left or toward the board fence, does it drain that way or does it go toward the building there?

Nester Jelen: It is a good question Bernie: I think it may be a bit of an optical illusion. It does drain this way. I will note that behind me the dumpster and a lot of the site is actually draining to corner the dumpster is and there is like a kind of a catch basin has some rip rap on it that does take in a lot of water as well. So, that is behind me and so a lot of the site was meant to drain to the south.

Guerrettaz: Ok, I think that I all that I have got right now. Thanks Jackie.

Clements: Thank you. Vicky, do you have any questions?

Sorensen: I do. Just too kind of bring me up to date, I saw in the summary all digital copy signs are prohibited in the county. Is this part of county and part of city? How did they get a variance to get a digital sign if the county says no to them?

Nester Jelen: Good question. This property is fully located in the county but the Country Club street is actually the city, so there has been some calibration on this part but petitioner actually requested a design standards variance similar to today that they are asking for and they were granted the 4.75 square feet prior. Now they just want to increase that that 16.9, I believe and in order to do that they need another variance.

Sorensen: Ok. Another question kind of going back to this shrubbery and all of that. You mentioned that they would have to tear up some asphalt where would that be that they would have to tear it up to add landscaping?

Nester Jelen: That is a good question Vicky. I am sorry I am going the wrong direction. There is a possibility that they could tear up this east side a little bit to add landscaping here. You will note that the dumpster location is kind of in the way. They also have since located I think an air pumping site here and I notice a lot people when they are not able to find a parking space here actually kind of parking here as well. This would be really the only location that I could see without disturbing too much other design standard requirements because the parking standards, the parking size has to be a certain width, the isle has to be a certain width so there is not a lot of room for movement on this site.

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Sorensen: In the original plans did they think all of this through or just or as they were developing things just coming up along?

Nester Jelen: You know that is a good question for the petitioner.

Sorensen: Ok, thank you Jackie.

Clements: Ok, is the petitioner or the petitioner's representative present and would you like to speak to the Board of Zoning Appeals?

Nester Jelen: I don't see them on, which is a little bit of a surprise. I am checking my email one more time. Let me see. I don't see. I did email them this afternoon so I am a little surprised to not see them on the call. I may just unmute this 322 number because that is the only number that we haven't heard from I think, so let me just do that and see if either of these numbers are the petitioner. I don't think so, I am pretty sure those aren't the petitioner which is Rajesh Patel.

Clements: Ok, well then it is back to us. We can either continue this case or entertain a motion a motion to approve it, disapprove it or to continue it.

Guerrettaz: Jackie, I have got another question. The fact that they have got these variances, I remember this petition, the fact that we granted them a variance on these bufferyards to the east and to the south is that an underdrain I am seeing coming out of that storm structure the southwest corner of the property going east? Is that an underdrain there? What am I looking at there at that dash line?

Nester Jelen: This? Which dash line? I will point to it and you tell me which line. Is this the line?

Guerrettaz: No, keep going, it's in the red box coming directly out of the east side.

Nester Jelen: Yes this is. It does go straight to the storm sewer.

Guerrettaz: Ok, so was there a medium in there for the bioretention basin to allow percolation to go through that medium into and underdrain out into the storm box?

Nester Jelen: Yes there was on the plans that I reviewed, there was supposed to be some sort of oil, filtration is that what you kind of getting at?

Guerrettaz: Yes, I am just looking at how the water is going to get into the storm box because I am not seeing any elevations or grades but seeing that underdrain that goes to the east it appears that they have got something planned to capture the water in the red box.

Nester Jelen: Yes.

Guerrettaz: Have you spoken to the petitioner's Engineer on this at all or has Terry?

Nester Jelen: Yes. We have done routine visits out there. I know that Connie went out when they

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were doing the bioretention and there was at first an issue with the soil mix that they use, so they had to take that out and put it back in. We have definitely been in touch with them as this has progressed but there was planned landscaping to go in even if it's just grasses or shrubs. I can kind of pull up some grades if you would like to see the grading plan.

Guerrettaz: I am just curious if they are wanting to leave it the way that it is or if there is any attempt to put any bioretention medium in that. The east line, it looks to me like it all kind of comes to the south just by looking at the way the site is but on the south line I am just curious is there any attempt to put a landscape plan together that may capture some of this based on what their last variance asked for?

Nester Jelen: I am including the grading plan which shows you that the water is coming this way and they did follow the oversized river gravel, bio-swale location and then they also did turf reinforcement with compost sand/topsoil mix. My understanding from the petitioner was they were working with a landscaping company and were concerned that the number of landscaping plants remaining would all have to go in this location and so they were concerned that it would delay or disrupt the filtration of the bioretention system because they know this underdrain is in there. Terry and Connie both are familiar with this site and disagree. I think that there could be some movement if we were to get the petitioner to talk with a professional a put in maybe some grasses, maybe not trees. I do understand that that can cause some disruption of pipes but any landscaping is some landscaping and right now it is grass.

Guerrettaz: That is kind of where I am going with this. I think I am going to recommend a continuance because I think we need to get some input from Connie and especially Terry to see if there is anything even possible here. The way that it sits now I don't think that we are meeting MS4 Operator or Drainage Engineer's requirements. So, I don't want to do a flat denial because a denial just means that they are going to be back because of something can't be built we are going to have to engage Terry anyway. Correct?

Nester Jelen: Yes, I think that is a good plan to include the petitioner.

Guerrettaz: I don't want to keep continuing these because our petitions get long but I also want to make sure that we are doing our due diligence understanding everything that is going and I frankly can't understand exactly what the petitioner thinks he can accomplish here or what Terry thinks has an issue with. I can go ahead and make a motion Madam Chair Woman.

Clements: Thank you, Mr. Guerrettaz.

**PETITIONER/PETITIONER'S REPRESENTATIVE –
2009-VAR-72 & 2009-VAR-73 – Rogers & Country Club: None**

SUPPORTERS – 2009-VAR-72 & 2009-VAR-73 – Rogers & Country Club: None

**FURTHER SUPPORTERS –
2009-VAR-72 & 2009-VAR-73 – Rogers & Country Club: None**

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REMONSTRATORS - 2009-VAR-72 & 2009-VAR-73 – Rogers & Country Club: None

**ADDITIONAL QUESTIONS FOR STAFF –
2009-VAR-72 & 2009-VAR-73 – Rogers & Country Club: None**

**FURTHER QUESTIONS FOR STAFF –
2009-VAR-72 & 2009-VAR-73 – Rogers & Country Club**

Guerrettaz: In the matter of 2009-VAR-72 and the matter of 2009-VAR-73, Rogers and Country Club Sign Digital Variance to Chapter 807, Rogers and Country Club Landscaping Variance to Chapter 830 at 2801 South Rogers Street, I move that we continue the petition until the December 2, 2020 Board of Zoning Appeals Meeting.

Sorensen: Second.

Wilson: I will call the roll. The vote is on a motion to continue both 2009-VAR-72 and 2009-VAR-73, Rogers and Country Club Sign and Landscaping Variance requests respectively. Again, a vote in favor is a vote to continue both petitions to the December 2, 2020 BZA Meeting. Vicky Sorensen?

Sorensen: Yes.

Wilson: Bernie Guerrettaz?

Guerrettaz: Yes.

Wilson: Margaret Clements?

Clements: Yes.

Wilson: The motion carries and this will be heard on the December 2, 2020 meeting.

The motion in cases 2009-VAR-72, Rogers & Country Club Sign (Digital) Variance to Chapter 807, and 2009-VAR-73, Rogers & Country Club Landscaping Variance to Chapter 830, in continuing the petitions to the December 2, 2020 Board of Zoning Appeals Meeting, carried unanimously (3-0).

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NEW BUSINESS

7. 2009-VAR-74 Prather Use Variance to Chapter 802.

One (1) 2.18 +/- parcel in Richland Township, Section 25 at 4655 W
Woodyard RD. **Zoned IL.** Contact: dmyers@co.monroe.in.us

BOARD ACTION: Clements introduced the petition.

STAFF ACTION:

Nester Jelen: I don't think we can hear you, Drew.

Clements: No, we can't hear you Drew.

Nester Jelen: Ok, now we can hear you.

Myers: Can you hear me now?

Nester Jelen: Yes.

Myers: Only one of the Bluetooth earbuds are working. Ok, moving right along this is the Jonathan Prather Use Variance to Chapter 833. The petition site is a 2.0 acre lot located in Richland Township at 4655 West Woodyard Road. The petitioner is requesting a Use Variance in order to construct a 30' by 80' residential accessory structure. The current use of the property is single family detached dwellings, which is not permitted in the current zoning district of Limited Industrial. The current zoning designation of Limited Industrial was assigned back when the City of Bloomington held jurisdiction in this area in the 2 Mile Fringe and it is staff's understanding that the zoning designation of IL in this area was due to the proximity of the adjoining railroad in the south and that is why this area is designated as such. According to the property report card, this property has a single family home constructed in 1920 and has been used as a residence ever since. Therefore the current use of the petition site is classified as pre-existing nonconforming use, per Chapter 803 and furthermore that use is designated as unpermitted. Any additional residential type uses on the property would not be permitted. The only way to go around this would be to apply for a Use Variance like we are here tonight or apply for a rezone. Lastly, it should be noted that the neighboring property to the west at 4661 also requested a Use Variance in the past and that was in 2018. That petition received a vote of 4 to 0 for approval. Here is the location map. As I stated, it is in Richland Township. It is on Woodyard Road. You can even see on that last map where the railroad track goes to the south of the property. Here is the current zoning map in the top left corner. The zoning is Limited Industrial and the Comprehensive Plan has it designated as MUCA Employment. Site conditions. As I stated before it is a 2 acre parcel. It is not part of a subdivision plat and it derives access off of West Woodyard Road. Most of it is under the 15 percent slope restriction. Here we have some aerial photography of the property getting an idea of what is on the property and the look of it. Another angle aerial photography and then the next few photographs will be on the ground. Here is the driveway point off of Woodyard Road and the existing single family residence that has been there for quite some time. More photographs here of the driveway and then panning to the backyard there are some structures that have been existing for what look like have been some time and then I walked back through the property looking back to the house and then the second photograph here is more of an idea of where the residential

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accessory structural will be placed. In the left of that photograph you can see another white pole barn that is the neighboring residential accessory structure that also received a similar use variance. Here is the petitioner's letter to the Board of Zoning Appeals stating the size of the accessory structure and his intent to use it for storage and as a work space and that work space is not a commercial work space. There will not be any commercial selling or anything like that out of this space. Here we have the petitioner's site plan. It shows the approximate location of the proposed accessory structure along with some measurements that they have provided here on this gridded paper. Overall, due to the findings of the Use Variance which are quite different than the normal design standards variance petition, staff had to recommend denial of this petition, based on the findings of fact, specifically Finding (D) – The strict application of terms of the zoning ordinance will not constitute and unnecessary hardship if applied to the property of which the variance is sought and Finding (E) – The approval would not be consistent with the Comprehensive Plan. Since the Comprehensive Plan is designated MUCA Employment, it was one of the findings that staff had to not support. I will now take any questions.

RECOMMENDED MOTION

Deny the use variance (Single Family Detached Dwellings) to Chapter 833 based on the findings of fact.

FINDINGS OF FACT: Use Variance

812-5 Standards for Use Variance Approval: In order to approve an application for a use variance, the Board must find that:

(A) The approval will not be injurious to the public health, safety, and general welfare of the community:

Findings:

- Approval of the use variance would allow the petitioner to construct an 30' x 80' (2,400 square feet) accessory structure on the petition site;
- The proposed use on the property does not require significant improvements or alterations to be made on site if approved;
- An approval would not negatively impact traffic circulation in the area;
- The petition site is not located in FEMA Floodplain;
- There are no known karst areas on the lot;
- Conclusion: The approval would not be injurious to the public health, safety, and general welfare of the community.

(B) The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner:

Findings:

- See Findings under (A);
- The proposed structure would meet all development standards per the Monroe County Zoning Ordinance;

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- The effect of the approval of the use variance on property values can be difficult to determine, as future circumstances are unknown;
- Conclusion: The use and value of the area adjacent to the property included in the variance may or may not be affected in a substantially adverse manner.

(C) The need for the variance arises from some condition peculiar to the property involved:

Findings:

- The use of “Single Family Detached Dwellings” is not a permitted use in the Limited Industrial (IL) Zoning District, thus requiring the variance to be filed;
- The Limited Industrial (IL) Zoning District permits eighteen (18) uses per Chapter 833 of the Monroe County Zoning Ordinance;
- The petition site has historically been used for residential purposes and is the current existing use of the property;
- There are no environmental constraints/conditions peculiar to the property;
- The majority of parcels in the immediate area are zoned Limited Industrial (IL) with their principal use being “Single Family Detached Dwellings” per Chapter 833 of the Monroe County Zoning Ordinance;
- According to the Monroe County Zoning Ordinance, only one principle use is permitted per legal lot of record;
- In order to utilize the petition site as one of the permitted uses within the property’s current Limited Industrial (IL) Zoning District, the current use of residential must cease and desist;
- Conclusion: The need for the variance does arise from some condition peculiar to the property involved.

(D) The strict application of the terms of the Zoning Ordinance will constitute an unnecessary hardship if applied to the property for which the variance is sought; and,

Findings:

- See Findings under (C);
- The strict application of the Zoning Ordinance will not effectively deprive the parcel owner of all reasonable economic use of the parcel;
- Conclusion: The strict application of the terms of the Zoning Ordinance will not constitute an unnecessary hardship if applied to the property for which the variance is sought.

(E) The approval does not interfere substantially with the Comprehensive Plan. Especially, the five (5) principles set forth in the Monroe County Comprehensive Plan:

- (1) Residential Choices;**
- (2) Focused Development in Designated Communities;**
- (3) Environmental Protection;**
- (4) Planned Infrastructure;**
- (5) Distinguish Land from Property;**

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Findings:

- See Findings under (A);
- The Comprehensive Plan designates the subject site as MCUA Employment, which is described previously in this report;
- The current and proposed expansion of the use is inconsistent with the Comprehensive Plan's designation;
- Conclusion: The approval would not be consistent with the Comprehensive Plan.

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 finding for ALL FIVE criteria in order to legally approve a use variance.

QUESTIONS FOR STAFF – 2009-VAR-74 – Prather

Clements: Do any members of the Board of Zoning Appeals have questions for Mr. Myers?

Sorensen: I have a question. Drew, the neighbor that got approved, how did that come about?

Myers: Sure. So, I looked at the minutes for that approval and a lot of the discussion was based on that the home had been existing there for quite some time and that the extension of a home in an area where traditionally it has been residential was not that big of a hurdle for the board to overcome at that time. Their main concern in that meeting was that the petitioner was also petitioning for a home based business or home occupation to use that structure as well. So, there was a lot of discussion that got hung up on the use of the accessory structure in that it wasn't just residential and there was some sort of commercial type of aspect to it. Overall, it seemed like the board at the time reasoned with the petitioner that the City had zoned this Industrial due to the proximity of the railroad and that the residences kind of got caught up in that zoning that they felt they would approve ultimately that use variance.

Sorensen: So, at this point, you don't feel like you can approve it and that is why you are denying it.

Myers: The findings for a use variances are fairly different than a design standards variance and they are quite difficult to support from a planning standpoint, specifically Finding (D). My conclusion was that strict application of the terms of the zoning ordinance will not constitute unnecessary hardship, meaning that they would not lose all economic use of the parcel if they were denied a residential type use, that is where I am bound there and then Finding (E) was for the Comprehensive Plan.

Sorensen: Ok. Thank you.

Guerrettaz: Drew, do you have an aerial view of the whole area out there? I know that you do can

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you pull that up?

Myers: One of these or do you want more of like the location area?

Guerrettaz: Maybe a larger photograph. Ok, that does it for me. Thank you.

Clements: Do you have any questions Mr. Guerrettaz?

Guerrettaz: No, not right now thanks.

Clements: Ok, thank you. Is Mr. Prather here and would you like to address the Board of Zoning Appeals?

Myers: Yes, I believe he is here and it should be Red Skateboarding.

PETITIONER/PETITIONER'S REPRESENTATIVE –2009-VAR-74 – Prather

Clements: Ok, could you please state your name for the Board, Mr. Prather?

Prather: Hello, can you hear me?

Clements: Yes.

Prather: Ok, my name is Jonathan Prather.

Clements: Would you please raise your right hand and do you swear to tell the truth and nothing but the truth?

Prather: Yes I do.

Clements: Thank you. Ok, please tell us what you want to do and what your request is about.

Prather: Cool. Thank you. So, basically I have a very small house and a very old barn that is currently, there is not a lot of uses for it in where that it is and how messed up it is. Basically I want to build a bigger pole barn so that I have more room for a little bit of storage. As you can see my name on here is Red Skateboarding. I own a small business downtown, a skateboard shop. I also use it as a place for me to skateboard a little bit in the winter time so. That is basically it. I just need a little more room.

Clements: Ok. Is there any member of the public who would like to speak either in favor or in opposition to this request? If there is no one, I will bring it back to the Board for further discussion, and/or recommendation.

Guerrettaz: Mr. Prather, you are concreting the floor in the building and the dimensions are 80' feet by 30' feet. What are they again?

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Prather: Yes, 80' feet by 30' feet.

Guerrettaz: Ok, this is kind of one of those areas where it is a mix between uses in the IL but also there is a lot of residences in here and people just kind of want to enjoy their life. What I see about this proposal is that it could potentially be a transition between what Mr. Prather wants to use it for and now versus what it could go with the IL later. So those are my thoughts and the direction that I am headed in and I fully understand staff recommendation. It is right in line with what their responsibilities are.

Clements: If it goes to IL later would the pole barn interfere with that?

Nester Jelen: Just to clarify Margaret, the property is already is zoned IL, so if in the Count Development Ordinance that we are updating, if it gets rezoned to an employment zone it would essentially still be under a nonconforming use.

Prather: Can I ask a question real quick?

Clements: Sure?

Prather: When I had approached, I think originally I had spoken to Jackie a couple of years ago about potentially trying to build something about my house just to try to have a little more space and at the time there was talk about this area being rezoned and I am not sure if, I was never told what it would be rezoned and yeah and I wasn't sure if, I guess if it gets rezoned as agricultural or something in my mind this is a building that would fit in any of the zoning. If in the future someone were wanting to use this building or the space as Limited Industrial I feel like the building would still fit that.

Guerrettaz: I am going to jump in here. First of all, when staff gives recommendations like that they don't know what the crystal ball is later and until they see a petition it is hard for them to judge whether or not they can tell you yes or no but that is kind of where I am leaning at is this structure has the potential to be useful in the IL zone and I am trying to think of a way to make it a placeholder until something like might happen on that property. Maybe you would do something in your entrepreneurial interests that would make it useful, I don't know. But I see this as a placeholder but this is a use variance not necessarily for the structure. Is that a good way to explain it Drew or Jackie?

Myers: Yes, I think that is a good way to explain it. The reason the use is pre-existing nonconforming is because it is residential in an industrial zone. If any other type of use were to go in on this property the residential type use would have to cease first. The structure as it is going in right now is under a residential accessory structure. Later down the road for whatever reason if someone were to purchase the property and use it for its original zoning intention, they could tear down the home and have the structure as an industrial type use if they chose to do that. But the point of this use variance is to permit a residential accessory structure on a property that doesn't permit residential type use.

Guerrettaz: Does that answer your question Mr. Prather?

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Prather: Yes, it answers my question. That is why I applied for a variance to be able to build one.

Guerrettaz: Sure we understand that.

Clements: Well...

Guerrettaz: I can make a motion. If it is not unanimous it gets automatically continued.

Clements: That's fine.

Guerrettaz: If it succeeds then we just keep on booging down the road, right.

Clements: Ok, that is good. Yes, please.

SUPPORTERS – 2009-VAR-74 – Prather: None

FURTHER SUPPORTERS – 2009-VAR-74 – Prather: None

REMONSTRATORS - 2009-VAR-74 – Prather: None

ADDITIONAL QUESTIONS FOR STAFF – 2009-VAR-74 – Prather: None

FURTHER QUESTIONS FOR STAFF – 2009-VAR-74 – Prather

Guerrettaz: **In the matter of case number 2009-VAR-74, Prather Use Variance to Chapter 802, located at 4655 West Woodyard Road, I move that we approve the Use Variance based on the findings of fact and the staff report submitted in the packet.**

Sorensen: I **second**.

Clements: Mr. Wilson.

Wilson: The vote is on the Prather Use Variance petition 2009-VAR-74. A vote in favor is a vote to approve the use variance, based upon the findings of fact, that there are unreasonable restrictions placed upon the property by not allowing the variance. Again a vote in favor is a vote to approve the variance finding that an unreasonable restriction has been placed upon the property. Bernie Guerrettaz?

Guerrettaz: Yes.

Wilson: Margaret Clements:

Clements: Yes.

Wilson: Vicky Sorensen?

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Sorensen: Yes.

Wilson: The variance is approved by a 3 to 0 vote.

The motion in case 2009-VAR-74, Prather Use Variance to Chapter 802, in favor of approving the variance with the findings as amended in the motion, carried unanimously (3-0).

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NEW BUSINESS

8. 2010-VAR-75

Clampitt Minimum Lot Size Variance to Chapter 804

9. 2010-VAR-76

Clampitt Minimum Lot Width Variance to Chapter 804

10. 2010-VAR-77

Clampitt Side Setback Variance to Chapter 804

One (1) 3.75 +/- acre parcel in Polk Township, Section 31 at

9998 S Chapel Hill Rd. **Zoned FR.** Contact: acrecelius@co.monroe.in.us

BOARD ACTION: Clements introduced the petition.

STAFF ACTION:

Crecelius: This petition is for Minimum Lot Size, Minimum Lot Width and a Side Yard Setback. The property is located in Polk Township, Section 31 addressed off of South Chapel Hill Road 9998. The property is currently zoned Forest Reserve. The property is currently 3.75 acres. The minimum requirement for the Forest Reserve zoning is 5 acres. For the Minimum Lot Width it is required that it have 200' feet width at building line. The entire property, it is already developed, it has a single family residential home on it, it is approximately 10' feet wide. The petitioners are potential buyers and they are hoping to purchase the property dependent upon approval of these variances. They have to develop a detached garage on the property. In order to do that they are requesting a Side Yard Setback. There is 15' feet required in the Forest reserve zone and they are requesting a 7' foot encroachment. Again, the property is zoned Forest Reserve and the Comprehensive Plan identifies it as Rural Residential. The property has a good amount of buildable area. It is already developed and has slope a little bit toward kind of the middle, a little jagged line, it is an odd shape in the middle and then towards the west at the very end of the property. When it comes to parcel size it is not unusual. There are more than 10 parcels in very close proximity that are under the 5 acre minimum that are also zoned Forest Reserve. So, right now the property holds a 2,100 square foot single family residence that was built in the 1960's. The current owner was issued a building permit in January 2019 for a residential addition and from what we can tell based on site visits and pictometry photos it appears that there as originally an attached garage that was converted to residential space. The petitioner site plan, the potential buyers is on the left that is showing their location of where they would like to add the detached garage. It seems like a natural kind of area but I will get to that. On the right are photos of what the property looks like now. As you see there is kind of a natural area that does like there was an attached garage. The gravel goes up to the building. There is no windows. It looks like a garage was sided in and turned into residential space. Staff recommends to approve the Minimum Lot Size and the Minimum Lot Width requirements from Chapter, of course, based on the findings of fact. But subject to Monroe County Highway and Drainage Engineer reports. We do recommend denial of the Side Yard Setback from Chapter 804 simply because they have adequate buildable area so there could be a detached garage that was possibly located behind their home within buildable area. Does anybody have any questions?

RECOMMENDED MOTION:

Approve design standard variances from the Minimum Lot Size, and Minimum Lot Width requirements of Chapter 804 of the Monroe County Zoning Ordinance based on the findings of fact and subject to the Monroe County Highway and Drainage Engineer reports.

Deny the design standard variance from the Side Yard Setback requirement of Chapter 804 of

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the Monroe County Zoning Ordinance based on the findings of fact, specifically (C).

FINDINGS OF FACT: Minimum Lot Size

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 site contains a Single Family Residential structure constructed in 1960;
- The property, as currently configured, is a pre-existing nonconforming, legal lot of record;
- Approval of the Minimum Lot Size variance is 1 of 2 minimum variances required to either change the configuration of the SFR or add a structure;
- The current owner appears to have converted an attached garage into residential space in 2019;
- The petitioners are proposing to purchase the property dependent upon the approval of the variances with the intent to construct a detached garage;
- Due to the narrow width of the property and the SFR's proximity to the side yard setbacks, encroachment into the side yard setback is unavoidable;
- 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:

- S Chapel Hill Road is a local road maintained by the County Highway Department;
- **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 adjacent and surrounding properties is Forest Reserve (FR);
- **Conclusion:** The character of the property included in the variance would not be altered

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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 would need a minimum lot size and 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 northwest;
- 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 further development to this pre-existing nonconforming legal lot of record without first receiving a lot size variance, or seeking a rezone. The lot was in existence prior to the 1997 zoning ordinance and therefore was made nonconforming by the ordinance.
- **Conclusion:** There **are practical difficulties** in the use of the property as defined in Chapter 801;

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:

- The site is approximately 100 feet wide. The FR zone requires a minimum of 200 feet in lot width;
- The site contains a Single Family Residential structure constructed in 1960;
- The property, as currently configured, is a pre-existing nonconforming, legal lot of record;
- Approval of the Minimum Lot Width variance is 2 of 2 minimum variances required to either change the configuration of the SFR or add a structure;
- The current owner appears to have converted an attached garage into residential space in 2019;
- The petitioners are proposing to purchase the property dependent upon the approval of the variances with the intent to construct a detached garage;
- Due to the narrow width of the property and the SFR's proximity to the side yard setbacks, encroachment into the side yard setback is unavoidable;
- 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:

- S Chapel Hill RD is a local road maintained by the County Highway Department;
- **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 Forest Reserve (FR);
- There are other parcels adjacent to and nearby that are zoned FR 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 would need a minimum lot size and 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 south;

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- The proposed location of the residential structure 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. Adjoining parcels to the south and east also do not meet minimum lot width.
- **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: 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:

- The site is 3.75 +/- acres and is zoned Forest Reserve (FR);
- The site is not located within an environmentally sensitive area;
- There are no visible karst features on the site or FEMA floodplain;
- There are no designated natural or scenic areas nearby;
- The site contains a Single Family Residential structure constructed in 1960;
- The property, as currently configured, is a pre-existing nonconforming, legal lot of record;
- The current owner appears to have converted an attached garage into residential space in 2019;
- The petitioners are proposing to purchase the property dependent upon the approval of the variances with the intent to construct a detached garage;
- Due to the narrow width of the property and the SFR's proximity to the side yard setbacks, encroachment into the side yard setback is unavoidable;
- Approval would allow the petitioner to apply for a building permit for a detached garage that encroaches 7' in the minimum 15' side setback for structures;
- The proposed detached garage will meet all other required design standards;
- **Conclusion:** It would not interfere with 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 site is accessed off of S Chapel Hill Rd, a Local road;
- The site has access to water and a 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 use of the petition site and adjacent properties is residential;
- Residential use within FR requires a 15' side yard setback;
- The Comprehensive Plan designates this area as Rural Residential;
- **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

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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 under A(1), A(2), and A(3);
- The petitioner is applying for a side yard setback 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 A(1) and A(2);
- Approval of the variance would allow the shed to remain in its existing location;
- **Conclusion:** 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.).

(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:

- See findings under A(1);
- For the detached garage proposal, practical difficulties do not exist on the property as the site in its current configuration as-built maintains all functionality as a single family residence. Although there are no other locations on the property that are suitable for the construction of the attached one-car garage within the Zoning Ordinance's Buildable Area standard, the current use of the property as a single family residence is unaffected whether or not a one-car garage is permitted to be built on site.
- **Conclusion:** There are not 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.

QUESTIONS FOR STAFF – 2010-VAR-75, 76 & 77 – Clampitt

Clements: Thank you, Ms. Crecelius. Does anyone have any questions for Ms. Crecelius?

Sorensen: I do. Did you talk with the people that are wanting to buy the property that they would be willing to build a garage elsewhere or do they want that garage to be where they have asked for it?

Crecelius: The site plan shown the screen on the left that is their ideal location. But because I am staff and I represent the ordinance and the Comprehensive Plan there technically are alternative areas where they could build. So, for that variance request I have to recommend denial.

Sorensen: Ok, thank you.

Guerrettaz: Anne, would you go to the aerial photos of the slope maps? If they were to build the garage in the back the scale is kind of hard to see but would they be pushed way back off of those slopes and then they build the driveway over the slopes behind the house?

Crecelius: So, they are not in an ECO zone. They are south of Lake Monroe but they are in an ECO zone so they are not restricted on driveways in slopes more than 15 percent. Technically they could put a driveway past the house and build a detached garage.

Guerrettaz: But the detached garage would need to be outside of the red or not?

Crecelius: It would have to be outside of the red. The red is depicting slopes greater than 15 percent, which is the county wide slope standard for structures.

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Guerrettaz: Right and I understand that. So, anything in front the slopes are less than 15 percent but if they built it in the back then they would be going way to the back, building a driveway back there behind the house and then they would have to bring, they would basically have an detached garage they are likely using daily to get in and out of their house. They would have to walk back out from the back yard in order to get back to their house. How close does it appear to the former garage are they proposing the new structure?

Crecelius: I believe it is within 10 feet of the existing home and within 7 feet of the property boundary.

Guerrettaz: Pardon me, I was going through the report. If they are building the detached garage behind their home outside the 15 percent slope or if they wanted to build it in the 15 percent slope they would have to come back for a variance in order to get it close enough to the house. Is that correct?

Crecelius: They could build, the technicality of it is that they could build a residential accessory structure. They have plenty of buildable area so they could build one there and because it is not ECO they can build a driveway that, so driveways that are not in ECO can be right on the property boundary as long as it's not on the neighbor's property. So, there is not setback for that. That is where the technicality comes in. Technically they could build an accessory structure behind the home that would meet setbacks, whether it would be convenient to have a detached garage that far back, I don't know, that comes into questions of how maybe the petitioner wants to use that detached garage. I would think detached garage you park you vehicle and you walk you groceries inside but that doesn't also represent every case. I don't have language from the petitioner specifying exactly what they want to use that for.

Guerrettaz: Right, well, what I was getting at is and I didn't do a very good job is if they were to build behind their home in order, if they wanted to build anywhere on the red, the actual structure, they would have to come in for a variance or not?

Crecelius: Correct if they were wanting to build that is fairly large drainage area as I am sure you can see from the contours lines and the labels, they would have to come back for a buildable area variance from Chapter 804.

Guerrettaz: Ok, thanks.

Clements: Thank you. Well, is the petitioner, Mr. Clampitt, here or the petitioner's representative and would you like to address the Board?

Crecelius: I am going to follow suit and do what Jackie did and check and see if I have a number.

Nester Jelen: I did check Anne and it is not on there. I don't see them unless they are calling from another number.

Clements: Can they raise their hand on zoom? To me, I would just say for the expedience of this hearing and it seems to me is that is quite a bit of practical difficulty that you demonstrated there,

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Bernie, through your questions. So, I would like to just give one last chance for members of the public to speak or the petitioner to speak if there is anyone here to speak on behalf of the case, in favor of the case or in opposition to the case, please make yourself known.

Crececius: And, if I may, Margaret, the Clampitt case, maybe if they hear their name.

Clements: Thank you.

Nester Jelen: It's not Page right, Anne? That wasn't the petitioner's first name?

Crececius: I don't remember his partner's name. I am not sure.

Nester Jelen: I have just requested to unmute the 3 people as attendees and no one is unmuting so I am guessing that they are not on the call.

Clements: Ok, well, in that case. We could either approve, disapprove, or continue the case. Does anyone care to make a motion?

**PETITIONER/PETITIONER'S REPRESENTATIVE –
2010-VAR-75, 76 & 77 – Clampitt: None**

SUPPORTERS – 2010-VAR-75, 76 & 77 – Clampitt: None

FURTHER SUPPORTERS – 2010-VAR-75, 76 & 77 – Clampitt: None

REMONSTRATORS - 2010-VAR-75, 76 & 77 – Clampitt: None

ADDITIONAL QUESTIONS FOR STAFF – 2010-VAR-75, 76 & 77 – Clampitt: None

FURTHER QUESTIONS FOR STAFF – 2010-VAR-75, 76 & 77 – Clampitt

Guerrettaz: I can make a motion.

Clements: Thank you, Mr. Guerrettaz.

Guerrettaz: Ok, and you tracked my thought process there Margaret. I am going to do all 3 of these together. **In the matter of case number 2010-VAR-75, 2010-VAR-76 and 2010-VAR-77, Clampitt Minimum Lot Size Variance to Chapter 804, Clampitt Lot Width Variance to Chapter 804, and Clampitt Side Setback Variance to Chapter 804 respectively, located at 9998 South Chapel Hill Road, I move approval of those variances based on the staff report and the findings of fact found therein.**

Sorensen: **Second.**

Clements: **And the practical difficulties, right?**

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Guerrettaz: **Yes.**

Clements: Vicky you second that?

Sorensen: I **second.**

Clements: Ok, Mr. Wilson.

Wilson: The motion is on petitions 2010-VAR-75, 2010-VAR-76 and 2010-VAR-77, Clampitt Minimum Lot Area, Minimum Width and Side Yard Setback respectively. The motion is to approve all 3 variances. An affirmative vote is a vote to approve all 3 variances. Margaret Clements?

Clements: Yes.

Wilson: Vicky Sorensen?

Sorensen: Yes.

Wilson: Guerrettaz?

Clements: You are muted, Bernie.

Guerrettaz: I vote yes and add that this is an excellent job by staff putting a very good petition together.

Clements: Yes, thank you.

The motion in cases 2010-VAR-75, Clampitt Minimum Lot Size Variance to Chapter 804, 2010-VAR-76, Clampitt Minimum Lot Width Variance to Chapter 804, 2010-VAR-77, and Clampitt Side Setback Variance to Chapter 804, in favor of approving the variances, with findings as amended per motion, carried unanimously (3-0).

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NEW BUSINESS

11. 2010-VAR-78 **Buergler Buildable Area Variance from Chapter 804**

One (1) 0.48 +/- acre parcel in Richland Township, Section 22 at 3370 W Sekiu CT. **Zoned ER.** Contact: rpayne@co.monroe.in.us

BOARD ACTION: Clements introduced the petition.

STAFF ACTION:

Payne: This is a request for a Buildable Area Variance from Chapter 804 for a property located in Richland Township, Section 22. A Summary of this petition; a variance request is for the construction of a 36' by 26' accessory pool and deck which would be outside of Buildable Area, so another words, the location of the pool is proposed in slopes greater than 15 percent. I do want to note that the use that is proposed is a permitted use in the Estate Residential zoning district, which is what this parcel is zoned. The property is located at 3370 West Sekiu Court and it is zoned Estate Residential. The parcel does contain quite a bit of slope, which is 15 percent or greater in this case and the location of the proposed pool will impact slopes, therefore would require a variance granted before the pool can be built. There is no FEMA on the property and there are no known karst features. The Comprehensive Plan has this designated as Farm & Forest. The photo on the left we are looking at the property essentially where the pool is proposed. On the right, we have got our MS4 Coordinator standing in the middle kind of indicating to a degree the slope. So, again this are both locations where the pool is planned. Here we are looking at the back of the petitioner house and I think the shot on the left is good indication of sort of the slope that is present on the lot has a ravine that flows across or goes across, pretty much the middle of the parcel. From the house they go down slope and then toward the back of the property they walk up it. The picture on the right is showing I shot the photo standing where essentially the pool is planned to be built, trying to catch the slope there. Another shot of the house and another shot of ravine that I was trying to describe. Again, picture on the left is just sort of showing where the septic is. It is closer to the house there in the left photographer and on the right I am just showing Sekiu Court with the property marker sign. Here we have the letter to the Board of Zoning Appeals that the petitioner submitted and on the right we have got his site plan. You can see looking at this picture what he is proposing and where he is proposing to put a deck and a pool. It is a what is called a recessed pool, which is a type of pool that is meant to accommodate slope or me built in slope and so you can see the degree of slope that is on the parcel except for running through the middle is no slope and that is the ravine. This is a good illustration. Given the slope situation out there I wanted the MS4 Coordinator to come and take a look, so he went on a site visit with me and what he discovered while out there and running calculations is that the drainage basin is smaller than what he had imagined, which allayed any concerned that he had and his biggest comment was making sure that the ravine wasn't blocked in any way with any sort of potential structure that might be built to access the pool. But he did say that he did not feel like the ravine collected very much water. Based on our findings of fact, staff does recommend denial of the design standards, again primarily based on Finding (C) regarding practical difficulty. Here in this case practical difficulties don't exist on the property because the property can still be used as in its primary functionality as a single family residence. So, again, just honoring the ordinance and based on this fact that we feel there is no practical difficulty and we are recommending denial. Are there any questions?

RECOMMENDED MOTIONS

Deny the design standards variance to Chapter 804 for Buildable Area (15% Slope Requirement) based on the findings of fact, specifically finding C, regarding practical difficulty.

FINDINGS OF FACT: Buildable Area Requirement

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 build an accessory structure outside of Buildable Area, in an area with slope 15% or greater (as defined in Chapter 825 Area 2 Regulations);
- The site is Lot 7 of the Rainier Hills Subdivision, a plat approved in 1992;
- The site gains access via W Sekiu CT, a paved road;
- The site has an existing residence;
- The site is adjacent to single family residential uses and agriculture to the north;
- The site had no FEMA floodplain on the lot;
- The site is not located within an 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:

- See Findings under Section A(1);
- The site gains access via W Sekiu CT, a local road;
- The septic system is on the east side of the residence and will not interfere with the proposed location of the pool;
- 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);

- The site is zoned Estate Residential (ER);
- The character of the Estate Residential (ER) District is defined as that which is primarily intended for low density, single family residential development on relatively flat land in areas that have some, but not full, public services, generally along or near major County roads or state highways. Its purposes are to permit limited single family residential development on large lots, to discourage the development of sanitary sewer systems except for existing development, to discourage the development of residential subdivisions and non-farm nonresidential uses, to protect environmentally sensitive areas, such as floodplain, karst, and steep slopes and to maintain the character of the surrounding neighborhood. Therefore, the number of uses permitted in the ER District is limited. Some uses are conditionally permitted. The conditions placed on these uses are to insure their compatibility with the low-density residential uses. The development of new residential activities proximate to known mineral resource deposits or extraction operations may be buffered by increased setback distance.
- Surrounding properties are zoned Estate Residential (ER) or Agriculture/Rural Reserve (AG/RR);
- The proposed accessory structure would meet density, bulk, setback and area standards for Estate Residential (ER);
- 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), A(2), A(3);
- The variance from slope requirements only applies to the proposed accessory structure. Any future expansion on this site into areas greater than 15% slope would require another buildable area variance, at a minimum;
- 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(1), A(2), A(3), and B(1);
- 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:

- 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:

- Petitioner has applied for this variance, which appears to be the minimum variance necessary to eliminate practical difficulties in the use of the property;
- For the accessory structure proposal, practical difficulties do not exist on the property as the site in its current configuration as-built maintains all functionality as a single family residence. Although there are no other locations on the property that are suitable for the construction of the accessory structure within the Zoning Ordinance's Buildable Area standard, the current use of the property as a single family residence is unaffected whether or not a pool and deck is permitted to be built on site;
- Conclusion: Practical difficulties **do not exist** on the property as the site in its current configuration as-built maintains all functionality as a single family residence.

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 – 2010-VAR-78 – Buergler

Clements: Do any members of the Board have questions for Ms. Payne? Bernie, you are still muted, I am sorry.

Guerrettaz: Thanks Margaret. I was going back and forth between the documents and the zoom anyway. Rebecca what was the recommended motions by the Drainage Engineer?

Payne: He said he did not have any concerns. He just wanted to make sure that the pool would be outside of any drainage easements, which there are none on the property and again, just making sure that the ravine doesn't get blocked up in anyway.

Guerrettaz: Thank you very much and not recommendations but recommended conditions. Thank you.

Payne. Yes.

Clements: Any others questions for Ms. Payne? Is the petitioner present, Mr. Buergler, and would you like to address the Board?

Nester Jelen: I think I do see the petitioner and I am asking them to unmute. It looks like they have called in. So, if you see on your phone, I am going to press ask to unmute, you have to look at your phone and press unmute to talk. Can you hear us? Tec Services, is there anything else that we are missing on this one? Are they connected ok?

Tech Services: It looks like their audio is enabled however it could be something like there is a pair of headphones attached to the phone and so it is trying to choose the wrong mic.

PETITIONER/PETITIONER'S REPRESENTATIVE – 2010-VAR-78 – Buergler

Buergler: I am here. Can you hear me?

Clements: Yes. Mr. Buergler, will you please state your name and raise your right hand?

Buergler: My name is Paul Buergler and I raised my right hand.

Clements: Thank you. Do you swear to tell the truth and nothing but the truth?

Buergler: Yes I do.

Clements: Thank you. Please address the Board in what you would like to do, how you would like to do it and why you would like to do it.

Buergler: At least we have gotten over the technical hurdles. I just wanted to say that the concerns seemed to be about a bridge or something that would stop the follow of water down in the ravine and it very rarely gets that wet down there but we don't want water down there to begin with. I

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have no plans to put a bridge. If I did anything it would be we would put like a foot of river rock and flat stones, things like that, maybe some rock. I also understand there would be a concern that if someone bought the house after us, which we have no intention of leaving, but that they would want to do something that you would not like. We would try to do landscaping in a way that they would not change that. I think if you see the pictures that you have got in the report we have used the river rock and things like that before in our landscaping and I am pretty sure it should be no problem to do it and if there was a problem and we saw there was retaining water we would simply just change it and redo it. Because we don't want water down there. So, if that is your concern, it is ours too. Also, there are 3 other pools in the neighborhood. I don't see any problem with that and if you have any questions I would be glad to answer.

Clements: Does anyone have any questions for Mr. Buergler? If there is none, I would like to ask if there are any members of the public who would like to speak in favor of or opposition to the petition. Then I bring it back to the Board for further discussion and/or recommendation.

SUPPORTERS – 2010-VAR-78 – Buergler: None

FURTHER SUPPORTERS – 2010-VAR-78 – Buergler: None

REMONSTRATORS - 2010-VAR-78 – Buergler: None

ADDITIONAL QUESTIONS FOR STAFF – 2010-VAR-78 – Buergler

Guerrettaz: Rebecca, I have got a quick question. This is Bernie. What are the site plan or what are the permit requirements for, they have to apply for a pool permit don't they?

Clements: Rebecca, you may be muted.

Payne: I said yes.

Clements: Thank you.

Guerrettaz: Ok, so there will be a review by the Building Department. Does Planning look at that also?

Payne: Yes, usually, since it has already went through the variance process we have already laid eyes on it at this point so we are reviewing it right now essentially.

Guerrettaz: Ok.

Clements: Ok. Is there a motion in this?

Guerrettaz: I can make on.

Clements: Thank you Mr. Guerrettaz.

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FURTHER QUESTIONS FOR STAFF – 2010-VAR-78 – Buergler

Guerrettaz: **In the matter of case number 2010-VAR-78, Buergler Buildable Area Variance from Chapter 804, located at 3370 West Sekiu Court, I move that we approve the variance based on findings of fact found in the staff report, practical difficulties have been met with the following conditions;**

- 1) The pool or its deck not be constructed in any documented drainage easement.**
- 2) There be no obstructions from construction of that amenity that obstruct the flow the drainage way that goes behind the home, between the proposed pool and the home.**
- 3) The MS4 Operator be given the opportunity and approve the location and plan of the plan as submitted by the petitioner.**

Sorensen: **I second.**

Wilson: I will call the vote. This is on petition 2010-VAR-78, Buergler Buildable Area Variance from Chapter 804. The motion is to approve with the change to the findings that there is practical difficulties with utilizing this site that does suffices in granting the variance with the following conditions; pool and deck must not affect any recorded drainage easement; not interfere with the natural drainage on the site and that the permit be reviewed by the MS4 Operator. Did I catch that all Bernie?

Guerrettaz: Beautifully done, Larry. Thank you.

Wilson: Again, a vote in favor is a vote to approve with the alternate findings of practical difficulties with the conditions set forth. Vicky Sorensen?

Sorensen: Yes.

Wilson: Bernie Guerrettaz:

Guerrettaz: Yes.

Wilson: Margaret Clements?

Clements: Yes.

Wilson: The variance is approved with the conditions set forth.

The motion in case 2010-VAR-78 - Buergler, in favor of approving the request with conditions and findings as amended, as set forth in the motion, carried unanimously (3-0).

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NEW BUSINESS

12. 2010-VAR-79 Ernst Side Yard Setback Variance from Chapter 833

13. 2010-VAR-80 Ernst Buildable Area Variance from Chapter 804

One (1) 0.45 +/- acre parcel in Bloomington Township, Section 18 at 4621 N Shelburne DR. **Zoned RS3.5.** Contact: rpayne@co.monroe.in.us

BOARD ACTION: Clements introduced the petition.

STAFF ACTION:

Payne: This is a petition with 2 variance requests. The first request is for a variance for the Side Yard Setback requirement and the second request Buildable Area related to 15 percent slope regulates. The petitioner is requesting these variances in order to expand her existing attached garage. This new garage expansion is measured at 12' feet by 22' feet. Currently this property is zoned RS3.5 and requires an 8' foot side yard setback and what the petitioner is proposing based on the location of the garage addition is a 2' foot setback. The petition site is located at 4621 North Shelburne Drive. It is zoned RS3.5 and contains about 0.45 acres. There are no known karst features on the lot and no FEMA Floodplain but there is slope which will be impacted by the proposed location of the garage expansion. The Comp. Plan has this designated as MCUA Suburban Residential. Here are some site photos. The left picture we are looking at the location of the proposed garage. Again, it would be an addition off of the existing garage. In the right picture again looking at the location of the garage just shot at a different angle. Here we are looking at the existing garage from across the street. The right picture is looking north toward the driveway. The left picture is showing the lot on the opposite of the garage and then the right picture is another shot looking east toward the again the location of the garage. Something interesting about this house is it seems to be situated on the lot towards the east side, no sorry, toward the north side. It is not quite centered in the lot. Here we are looking at the property marker signs. This is the letter submitted by the petitioner to the Board of Zoning of Appeals and on the right we have got the site plan, so you can see on the north side of the property where the garage has been proposed it is leaving about 2 feet of setback. Also you can see it is built on some slopes. This exhibit didn't not make it into your reports but I definitely wanted to include it into the presentation. It was just given to me recently. The petitioner is in the process of getting a survey boundary completed by a professional. This is just some preliminary documentation that she was able to get and give me just clarifying the boundary lines and just also clarifying that the garage addition is in fact totally on her parcel. There was some concern that without knowing the exact boundary line we might face the issue of her building over boundary lines but it doesn't appear like that is going to happen. I just wanted you to be able to see this preliminary survey. It was just kind of a timing thing. She is working on getting it certified and completed but it just didn't happen in time for the meeting tonight. Regarding the recommended motion, this is another case where staff is actually denying the design standards variance to the Side Yard Setback. This is from Chapter 833. Again, based specifically on Finding C, practical difficulty and here we found there is not a practical difficulty because a change in the design of the proposed addition could alleviate the need for either the Side Yard Setback variance or the Slope variance. Again, regarding the Buildable Area variance request we recommend denial, Finding C, again, regarding practical difficulty. This idea that there is another location on her property where she could conceivable build or add a garage addition on the lot that would not violate setback or buildable area. Are there any questions?

RECOMMENDED MOTION:

Deny the Design Standards Variance to the Side Yard Setback standard in Chapter 833 of the Monroe County Zoning Ordinance based on the findings of fact, specifically finding C, regarding practical difficulty.

Deny the Design Standards Variance to the Buildable Area requirement of Chapter 804 of the Monroe County Zoning Ordinance based on the findings of fact, specifically finding C, regarding practical difficulty.

FINDINGS OF FACT: Side Yard Setback Standard

833. 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 parcel currently has a home and attached garage;
- The proposed garage expansion is 12' x 22';
- The proposed expansion will result in an encroachment of 6 feet on the side yard setback standard;
- The petition site is zoned Single Family Residential (RS3.5);
- There is no evidence that the building site is located on sensitive lands;
- There is no known karst on the property;
- The site is not within the FEMA floodplain;
- The site is adjacent to residential lots;
- 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);
- N Shelburne DR is classified as a local road;
- The existing and proposed expansion on the petition site would not have an effect on pedestrian or vehicular movement along N Shelburne DR;
- 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);
- Petitioner's property is part of the Stone Hedge Manor First Addition Corrected Plat, Lot 14;
- Position of the house on the lot is located more towards the northern property verses the center. This results in its proximity to the side yard setback and boundary line;
- 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);
- 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);
- There is no FEMA floodplain on the site;
- Without a boundary survey, staff is unable to approve the side yard setback variance since the proposed setback is so close to the adjacent neighboring property line;

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- Conclusion: It would promote conditions (on-site or off-site) detrimental to the use and enjoyment of other properties in the area, particularly if the garage expansion encroaches into the neighboring property.

(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:

- See findings under section A (1);
- Practical difficulties do not exist on the property as the site in its current configuration as-built maintains all functionality as a single family residence. There are other locations on the property that are suitable for the construction of a one-car garage within the Zoning Ordinance's Buildable Area standard; the current use of the property as a single family residence is unaffected whether or not a garage expansion is permitted to be built on site;
- Conclusion: There is not a practical difficulty as a change in the design of the proposed addition alleviates the need for either variance.

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: Buildable Area Requirement

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;

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Findings:

- Approval of the variance would allow the petitioner to encroach into the 15% slope area according to GIS;
- The area is not located within the floodplain of the Environmental Constraints Overlay area;
- Approval of the variance would allow the petitioner to further develop a 0.45 +/- acre parcel;
- The parcel currently has a home and attached garage;
- 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:

- The proposed garage expansion will partially encroach into the non-buildable area of the property;
- N Shelburne DR is a local road. There are currently no plans to improve N Shelburne DR;
- The property is served by sewer;
- The existing and proposed expansion on the petition site would not have an effect on pedestrian or vehicular movement along N Shelburne DR;
- 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 buildable area requirement applies to all properties, regardless of their underlying 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;

- (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;
- 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 (1);
- There is no FEMA floodplain on the site;
- Conclusion: It would not promote conditions (on-site or off-site) 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:

- See findings under section A (1);
- The petitioner has buildable area elsewhere on the lot for a garage addition;
- Conclusion: There is not a practical difficulty as a change in the design of the proposed addition alleviates the need for either variance.

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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 – 2010-VAR-79 & 80 – Ernst

Sorensen: I have a question. On the one picture showing the garage and the extra pavement, does a person have to get a permit to put that extra pavement or is that something that you can do? There where the truck is sitting.

Payne: Like the driveway that Anne mentioned earlier, it is ok to put concrete down, it just needs to be on her property.

Sorensen: Ok.

Clements: Are there any other questions of staff? If there is none, is Ms. Ernst here and would you like to address the Board?

Nester Jelen: I do see Page on the call. I am going to ask you to unmute. Can you hear us?

PETITIONER/PETITIONER'S REPRESENTATIVE – 2010-VAR-79 & 80 – Ernst

Ernst: Yes. Can you hear me?

Nester Jelen: Yes.

Clements: Would you please state your name and raise your right hand?

Ernst: Page Ernst.

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

Ernst: Yes.

Clements: Thank you. We would like to hear your comments.

Ernst: I am just trying to add this 3rd bay onto my existing garage. I am just trying to provide a safer and covered area for parking at my house. My driveway is very steep. The pictures don't really tell how steep the driveway is but it can get very slick in the winter time and there is a big nut tree over by where the truck is parked that has a lot of nuts that fall and hit anything that is parked out that. It is an older home. It was built about 45 years ago so the inside space of the existing garage is just very small. So we are just looking to just take out that wall there and just

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add one more bay onto the side just to have an additional place for some parking and like she mentioned with the surveying all of this will be on my property, just a little closer to the property line. I understand the denials for why that was the request, but I am just, there is not really, if putting it on the other side of the house can go without needing a variance but there is really not a logical way to have access to garage over there with the driveway being on the other side. So that is kind of why that is my only plan of the location for putting the garage. So, unless anybody has any questions I think that was really all I had to add.

Clements: Does anyone have any questions for Ms. Ernst?

Guerrettaz: I have got a brief question. So, Ms. Ernst, when you say it is going to be 2' feet off of the property line, if you haven't had the survey done yet how do you know that?

Ernst: The survey had been done. It is still going through the back in paperwork to have the official stamp on it. They just went ahead and sent me the preliminary drawing that is in the process of becoming official. So, it is just going to take another couple of weeks for that process to finish and actually when they did come and survey I did find out that it actually going to be a little over 2' feet. I thought as you can on this front corner I have about 14.37 and the garage I am adding on is going to be 12' feet there. So, in the front I will actually have a little over 2' feet and then in the back I will have even some additional space just due to the house not sitting square on the on the lot. But the surveyor has been out and actually conducted the survey they are just finishing the paperwork.

Guerrettaz: This is a licensed surveyor that is doing this for you?

Ernst: Yes.

Guerrettaz: Sorry Margaret, go ahead.

Clements: No, that's ok, I wanted to hear what you have to say. I am just a little restless.

Guerrettaz: No, that is all that I have. Thank you.

Clements: Vicky, do you have any questions?

Sorensen: No.

Clements: Ok. I would like to ask if there is any member of the public either in favor of or in opposition to this request. I don't think, I don't know. I can't see.

Nester Jelen: Margaret, we don't have anybody left.

Clements: Wonderful. I bring it back to us for further discussion and/or a motion.

SUPPORTERS – 2010-VAR-79 & 80 – Ernst: None

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FURTHER SUPPORTERS – 2010-VAR-79 & 80 – Ernst: None

REMONSTRATORS - 2010-VAR-79 & 80 – Ernst: None

ADDITIONAL QUESTIONS FOR STAFF – 2010-VAR-79 & 80 – Ernst

Sorensen: I have a question that just came to my mind. Should we wait for the original survey, or the main survey so we know for sure everything is right or is it ok to go ahead with just a preliminary survey with we want to approve it?

Guerrettaz: If I end of making a motion on this if it looks like we are making a motion to approve I can probably craft a motion that can rest our mind in a couple of different scenarios if that is helpful.

Sorensen: Ok, thank you Bernie.

Clements: That would be helpful Mr. Guerrettaz.

Guerrettaz: I think it is a good location for the garage. It is an older home. What we need now is different than what we needed 30 or 40 years ago when the house was built. It is an opportunity to get another car off of the driveway, which we have oils and different things that come out through the driveways. If they end up putting the garage on the living side of the house, then they would have to have a driveway go to the front or petition for a another driveway permit which they would not likely obtain likely from the Highway Department, so I think there are practical difficulties here.

Clements: Thank you. Would you like to make a motion, then?

Guerrettaz: I can do that.

Clements: That would be wonderful. Thank you.

FURTHER QUESTIONS FOR STAFF - 2010-VAR-79 & 80 – Ernst

Guerrettaz: In the matter of 2010-VAR-79 and 2010-VAR-80, Ernst Side Yard Setback Variance from Chapter 833 and Ernst Buildable Area Variance from Chapter 804 respectively, located at 4621 North Shelburne Drive, I move that we approve the variances based on practical difficulties and the staff report findings of fact found therein with on condition;

- 1) Prior to any issuance of an Improvement Location Permit that the survey be completed demonstrating that the 22' by 12' structure can fit within the property with no less than 2' foot setback.**

My point there being that we limit the size of the structure to 12' by 22' regardless of what the side yard setback is but it cannot be less than 2' feet, so if it is 2 and three eighths of an inch, which is what their preliminary survey shows, it still 12' by 22'. They don't put up the other three eighths of an inch or foot or whatever the survey may find. That is my motion.

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Sorensen: I **second**.

Wilson: I will call the roll. The vote is on petition number 2010-VAR-79 and 2010-VAR-80, the Ernst Side Yard and the Ernst Buildable Area Variances respectively. The motion is to approve both variances based upon the staff report with the change in the finding regarding that there is practical difficulty in regard to utilizing the property that suffices granting both of the developments standard variances and subject to the condition that a certified survey show that the garage is located no closer than 2 feet to the side yard shown on the survey. The variance is up to a maximum of 2 feet to the side yard based upon the certified survey that will be produced prior to the issuance of the Improvement Location Permit. Again, a motion in favor is a vote to approve both variances with the revised findings and the conditions set forth in the motion. Bernie Guerrettaz?

Guerrettaz: Larry, just a friendly correction on that. The addition to the garage not to exceed by 22 as well.

Wilson: Ok. Further that, the building is not to exceed 22' by 12' in measurements.

Guerrettaz: Thank you.

Wilson: Again, a vote in favor is a vote to grant the variances with the conditions. Bernie Guerrettaz?

Guerrettaz: Yes.

Wilson: Margaret Clements?

Clements: Yes.

Wilson: Vicky Sorensen?

Sorensen: Yes.

Wilson: The motion carries 3 to 0.

The motion in cases 2010-VAR-79, Ernst Side Yard Setback Variance from Chapter 833 and 2010-VAR-80, Ernst Buildable Area Variance from Chapter 804, in favor of approving the requests with conditions and findings as amended, as set forth in the motion, carried unanimously (3-0).

DRAFT

NEW BUSINESS

14. 2010-VAR-81

**Yeshua Tabernacle of Praise Variance from
Chapter 806-5(D) Surfacing Requirement.**

One (1) 10.66 +/- acre parcel in Bean Blossom Township, Section 30 at
9700 W Foster Fiscus RD.

Zoned AG/RR. Contact: dmyers@co.monroe.in.us

BOARD ACTION: Clements introduced the petition.

STAFF ACTION: Petition was continued by petitioner.

DRAFT

NEW BUSINESS

15. 2010-VAR-82 Turner Minimum Lot Size Variance from Chapter 804

One (1) 3.12 +/- acre parcel in Polk Township, Section 34 at
9750 S Dutch Ridge RD. **Zoned FR.** Contact dmyers@co.monroe.in.us

BOARD ACTION: Clements introduced the petition.

STAFF ACTION:

Myers: Thank you, Margaret. Can you guys hear me ok?

Clements: Yes.

Myers: Alright. This is the Turner Minimum Lot Size Variance to Chapter 804. The petition site is 3.12 acres, located in Polk Township at 9750 South Dutch Ridge Road. The petitioner is requesting a design standards variance in order to construct a 20' by 25' foot carport on the property. The design standard sought to be varied is the Minimum Lot Size requirement for the Forest Reserve zone, which is 5 acres and as I stated before this petition site contains only 3.12 acres. Moving along to the location map. It is in Polk Township, Section 34. There are 2 parcels here. They are all one lot of record. The current zoning is Forest Reserve. The Comprehensive Plan has it designated as Farm & Forest. Site conditions, the site contains approximate 938' square foot single family residence, a 960' square foot pole barn, a utility shed, and a lean-to. The petition site has access to water and utilizes a septic system. It has access off of South Dutch Ridge Road. There is no FEMA Floodplain. There are no known karst features and it is not in the ECO Area. Slopes are not of a concern for this property and on this property, this one here, the parcel size map, you can note that there are multiple other parcels in the area that do not meet this minimum 5 acre requirement for the FR zone. Here are some site photos of the driveway cut off of South Dutch Ridge Road. Photographs going up the driveway. The carport will be placed to the left going up to the driveway and then right photograph here is the single family residence. Here are some photographs of the site where the carport will go. The petitioner did put some stakes out there to show the approximate location they wish to construct the carport and the bottom right photograph was just a different angle to show you where that is. Here is the petitioner's letter to the Board of Zoning Appeals requesting the Minimum Lot Size Variance as well as stating their intention to build the carport, 20' by 20' by 5' feet. Here is the site plan that I helped the petitioner make for the carport. These numbers on here are measured by the petitioner. We talked back and forth to make sure we got these numbers right and I think that is shows pretty much where that carport is going to go and in relation to any property line issues or any septic tank issues. Overall, staff recommends approval of the design standards variance from Minimum Lot Size requirement from Chapter 804 of the Monroe County Zoning Ordinance 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 standard variances from the Minimum Lot Size requirement of Chapter 804 of the Monroe County Zoning Ordinance based on the findings of fact and subject to the Monroe County Highway and Drainage engineer reports.

FINDINGS OF FACT: Minimum Lot Size Standard

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 further develop a 3.12 +/-acre lot with a 20' x 25' detached carport;
 - The site has a ~938 sq. ft. home built in 1989, ~960 sq. ft. pole barn, a ~168 sq. ft. utility shed, and a ~480 sq. ft. lean-to structure per the property report card;
 - There are no designated scenic areas adjacent to the petition site;
 - There is no evidence that the carport 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 S Dutch Ridge Road, a designated local road;
- The proposed construction will not interfere with water lines or septic;
- 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 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 A (1);
- The petition site and adjacent properties are zoned Forest Reserve (FR) with a minimum lot size requirement of 5.0 acres;
- The petition site and adjacent properties are a residential or agricultural use;
- There are approximately 20 parcels in a half-mile radius that do not meet the FR minimum lot size requirement;
- 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 (1);
- There is no FEMA floodplain on site;
- Drainage from the existing structures run towards the northeast or the southwest. Drainage from the proposed carport is not expected to interfere with this pattern;
- Conclusion: It **would not** promote conditions (on-site or off-site) 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;

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- (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 strict application of the ordinance would not allow any further development on the parcel without a minimum lot size variance;
- If the variance is not granted, no existing structures could be expanded, or new structures added;
- Petitioner has applied for one variance, which is the minimum necessary to add an additional structure to the property;
- 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.

QUESTIONS FOR STAFF – 2010-VAR-82 - Turner

Clements: Does anyone have any questions for Drew?

Guerrettaz: I have got a question Drew. What are the filing fees roughly for this petition?

Myers: A designs standards variance petition filing fee is \$200.00 for the first variance. Any additional variance is \$50.00 extra and then there is an \$8.50 fee for the petition sign. So, for this particular petition itself, it is \$208.50.

Guerrettaz: Thanks.

Clements: Is Mr. Turner here?

Myers: I believe that he is and his phone number ends in 7406.

Nester Jelen: Mr. Turner, if you can see your phone I am going to ask you to unmute and if you just press the unmute button you should be able to talk.

PETITIONER/PETITIONER'S REPRESENTATIVE – 2010-VAR-82 – Turner

Turner: This is Mr. Turner.

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Clements: Mr. Turner, would you please state your name and raise your right hand?

Turner: Mike Turner.

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

Turner: Yes, I do.

Clements: Thank you. Well, we would like to hear from you about your case and what you are doing.

Turner: I applied for a permit for a carport and they told me my lot size wasn't big enough. I only have 3.12 acres and I had to have 5, so I had to apply for a variance. I am just trying to get a carport to park my cars under and that is what I am after.

Clements: Thank you. Does anyone have any questions for Mr. Turner? If none, thank you Mr. Turner for making your case to us and I would to open up the floor to any other member of the community either in favor or in opposition to this request. I don't believe there is anyone else in the lineup, is there Jackie?

Nester Jelen: No.

Clement: Ok, back to us. Is there a motion on this request?

Guerrettaz: I can make on.

Clements: Thank you Mr. Guerrettaz.

SUPPORTERS – 2010-VAR-82 – Turner: None

FURTHER SUPPORTERS – 2010-VAR-82 – Turner: None

REMONSTRATORS - 2010-VAR-82 – Turner: None

ADDITIONAL QUESTIONS FOR STAFF – 2010-VAR-82 – Turner: None

FURTHER QUESTIONS FOR STAFF – 2010-VAR-82 – Turner

Guerrettaz: And this is another one just for the record, I think would be a good one for a Hearing Officer potential, at least for consideration there. **In the matter of 2010-VAR-82, Turner Minimum Lot Size Variance from Chapter 804 at 9750 South Dutch Ridge Road, I move approval of the variance based on the staff report and the findings of fact found therein.**

Sorensen: **Second.**

Clements: Mr. Wilson?

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Wilson: The motion is to approve the variance 2010-VAR-82, Turner Minimum Lot Size variance. A vote in favor is a vote to approve the variance. Margaret Clements?

Clements: Yes.

Wilson: Vicky Sorensen?

Sorensen: Yes.

Wilson: Bernie Guerrettaz?

Guerrettaz: Yes.

Clements: Thank you very much. So the motion has passed. Mr. Turner thank you for coming before us and your request for a carport despite the lot size restrictions has been approved, so thank you.

Turner: Thank you very much.

Guerrettaz: Mr. Turner, I have got a quick question. What is the cost of your carport? I am just curious.

Turner: \$3,500.

Guerrettaz: Will you be putting that together yourself or are you going to hire that done?

Turner: It comes, they install it and anchor it. They put it together and install it and anchor it.

Guerrettaz: Excellent. Well, good luck with it. I was just kind of curious for my knowledge. Thank you, sir.

Turner: You are welcome.

The motion in case 2010-VAR-82, Turner Minimum Lot Size Variance from Chapter 804, in favor of approving, carried unanimously (3-0).

DRAFT

REPORTS:

Planning/Wilson: I just want to note that we are scheduled to receive the administrative procedures for the new development ordinance for the county and that should include the BZA procedures as well. My guess is Bernie, we will have provisions set forth for a Hearing Officer in those drafts. Just to let you know. The other thing that we are looking at is ways to maybe avoid the need for variances for pre-existing lots of record. It is very difficult because it is often difficult to determine what is a pre-existing lot of record in the county because there was so much parcelization that went on for many years. There are many lots that may not have been created legally according to the subdivision control ordinance that was in place at the time. We are looking at that option. I will also note that we tried to speed up our presentations as far as not going through the report in detail. I think you are going to see more of that and probably will see more condensed BZA reports in the future.

Clements: All of the staff have really been doing a really remarkable, professional and thorough job and I am really grateful to them. So, thank you. Is there a motion to adjourn?

Guerrettaz: So moved.

Sorensen: Bernie I was going to do that for the change.

Guerrettaz: I was waiting on you Vicky and you kind of let me down. I was afraid Margaret would put the hammer down if we didn't keep moving so I just stepped in.

Sorensen: You don't know how much I appreciate. One day I am going to surprise you and do a motion.

Clements: I always learn from Bernie's motions.

Sorensen: I know I write down everything he says so I can learn.

Guerrettaz: I have got a motion on the table.

Sorensen: Second.

Nester Jelen: Thank you all.

Clements: Thank you everyone.

Legal/Schilling: No report.

The meeting adjourned at 7:50 P.M.

Sign:

Attest:

Mary Beth Kacmarczyk, Chairman

Larry J. Wilson, Secretary