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**BOARD OF ZONING APPEALS**  
**Virtual Meeting via ZOOM - Minutes**  
**April 7, 2021 - 5:30 p.m.**

**CALL TO ORDER**

**ROLL CALL**

**INTRODUCTION OF EVIDENCE**

**APPROVAL OF AGENDA**

**APPROVAL OF MINUTES** – December 2, 2020

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

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

**ABSENT:** *None*

**STAFF PRESENT:** Larry Wilson, Director, Jackie Nester Jelen, Assistant Director, Tammy Behrman, Senior Planner, 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 minutes from December 2, 2020, carried unanimously.**

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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](mailto:jnester@co.monroe.in.us)

**NEW BUSINESS:**

**1. 2102-VAR-10      Morris Minimum Lot Size Variance to Chapter 804**

**2. 2102-VAR-11      Morris Buildable Area (15% Slope) Variance to Chapter 804**

One (1) 1.41 +/- acre parcel in Perry Township, Section 34 at 1680 E  
Sanders Second AVE. **Zoned CR, ECO3.**  
Contact: [acrecelius@co.monroe.in.us](mailto:acrecelius@co.monroe.in.us)

**3. 2102-VAR-12      Burns Front Yard Setback Variance to Chapter 833**

One (1) 1.11 +/- acre parcel in Bloomington Township, Section 31 at  
3519 W Vernal PIKE. **Zoned RS3.5.** Contact: [tberhman@co.monroe.in.us](mailto:tberhman@co.monroe.in.us)

**4. VAR-21-16      Curry Buildable Area (15% Slope) Variance to Chapter 804**

**Curry ECO Area 1 (12% Slope) Variance to Chapter 825**

One (1) 3.59 +/- acre parcel in Bloomington Township, Section 22 at 3595  
N Hinkle RD. **Zoned RE2.5 / ECO Area 1.**  
Contact: [dmyers@co.monroe.in.us](mailto:dmyers@co.monroe.in.us)

**5. VAR-21-17      Patrick and Ilene Adams c/o Norbert Garvey Eco Area 1 (12% Slope)  
Variance to Chapter 825**

One (1) 5.01 +/- acre parcel in Clear Creek Township, Section 36 at 5337  
E Prince RD. **Zoned FR, ECO 1.** Contact: [rpayne@co.monroe.in.us](mailto:rpayne@co.monroe.in.us)

**6. VAR-21-18      Elliott Minimum Lot Size Variance to Chapter 804**

One (1) 0.25 +/- acre parcel in Perry Township, Section 26 at  
5785 S Handy RD. **Zoned SR.** Contact: [acrecelius@co.monroe.in.us](mailto:acrecelius@co.monroe.in.us)

**\*\*\*WITHDRAWN BY STAFF\*\*\***

**7. CDU-21-1      Hopwood Conditional Use to Chapter 813 for Agricultural  
Event Center, Small.**

One (1) 114.31 +/- acre parcel in Clear Creek Township, Sections 07 and  
08 at 620 W Chumley RD. **Zoned AG/RR.**

Contact: [rpayne@co.monroe.in.us](mailto:rpayne@co.monroe.in.us)

**\*\*\*CONTINUED BY PETITIONER\*\*\***

**8. VAR-21-19      Weber Side Yard Setback Variance to Chapter 833**

One (1) 0.64 +/- acre parcel in Bloomington Township, Section 36 at  
4585 E State Road 45. **Zoned RE2.5.** Contact: [tbehrman@co.monroe.in.us](mailto:tbehrman@co.monroe.in.us)

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- 9. VAR-21-20**      **Eason Minimum Lot Size Variance to Chapter 804**  
**Eason Front Yard Setback Variance to Chapter 804**  
**Eason Buildable Area Variance to Chapter 804**  
One (1) 0.83 +/- acre parcel in Benton North Township, Section 35  
at 9155 E Southshore DR.  
**Zoned SR.** Contact: [acrecelius@co.monroe.in.us](mailto:acrecelius@co.monroe.in.us)
- 10. VAR-21-21**      **Shumaker Minimum Lot Size Variance to Chapter 804**  
**Shumaker Minimum Lot Width Variance to Chapter 804**  
One (1) 2.23 +/- acre parcel in Salt Creek Township, Section 34 at  
7504 E Rush Ridge RD.  
**Zoned FR / ECO Area 1.** Contact: [dmyers@co.monroe.in.us](mailto:dmyers@co.monroe.in.us)
- 11. VAR-21-23**      **Perry Buildable Area (15% Slope) Variance to Chapter 804**  
**Perry ECO Area 3 (18% Slope) Variance to Chapter 825**  
One (1) 1.33 +/- acre parcel in Perry Township, Section 13 at  
Parcel no. 53-08-13-100-008.000-008.  
**Zoned RE2.5 / ECO Area 3.** Contact: [dmyers@co.monroe.in.us](mailto:dmyers@co.monroe.in.us)  
\*\*\*CONTINUED BY PETITIONER\*\*\*
- 12. VAR-21-24**      **Wyss Side Yard Setback Variance to Chapter 804**  
One (1) 0.5 +/- acre parcel in Benton North Township, Section 27 at  
3519 W Vernal PIKE.  
**Zoned RS3.5.** Contact: [tberhman@co.monroe.in.us](mailto:tberhman@co.monroe.in.us)  
\*CONTINUED BY STAFF\*

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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](mailto:jnester@co.monroe.in.us)

**BOARD ACTION:** Kaczmarczyk introduced the petition.

#### **STAFF ACTION:**

Nester Jelen: Thanks Mary Beth. Can everyone see my screen, the Power Point?

Sorensen: Yes.

Kaczmarczyk: Yes ma'am.

Guerrettaz: Yes.

Nester Jelen: Thank you. Alright, so this is the Patzner General Contractor Use Variance to Chapter 802. This is a property located at 5605 South Old State Road 37. It is currently zoned Estate Residential and it is 0.68 acres. Just a little bit of history about this case, it started in December of 2018 as enforcement. We have had no citizen complaints to date. But Riverway Plumbing is being run out of a residential lot and so in order to proceed with running out of this residentially zoned lot you may rezone it, you may proceed with a Use Variance, which is what they are doing in this case or move the business. So, they are actively moving the business but this just shows you kind of the timeline. They have been continued a number of times and tonight is one of their continuances to this meeting. Just as a reminder, they are moving the business. The current location of the business is this red triangle here at 5605 South Old State Road 37 and they have actually purchased a property here with this yellow rectangle and they are actively trying to relocate the business at this location. However, there has been some issues with getting the final grading completed and there has just been a little bit of safety concerns in terms of opening it up in the timeline for this meeting. So, we felt that it wasn't ready yet for Occupancy or Conditional Land Use Certificate as of March 26<sup>th</sup>. We are still working with Mr. Patzner to actively get the building occupied and safely locate it with all of the improvements minimum necessary to proceed. As, I mentioned they are currently running the Riverway Plumbing business out of this red triangle location, which contains a single family resident as a rental and then a detached residential accessory structure. Here we are located in Perry Township and as I mentioned the current a zoning is Estate Residential and they are moving it to this Pre-Existing Business zoned lot. Just some site photos for you here. This pole barn building here was constructed in I believe around 2016 and it was stated it was only for residential use. But part of the enforcement issue was that they are using it as a business with too many employees to constitute a Home Based Business, among other things. The Comprehensive Plan has this as Mixed Residential and just a couple pictometry photos for you as of 2020, so quite a commercial use and we frankly happy to see the move over to a commercially zoned property build the parking facilities and infrastructure they need for the business. As it relates to this residential property, staff is keeping with the recommendation of denial for the Use Variance based on findings of fact. I can take 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;
- 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;

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- 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,**

**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

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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.

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

### QUESTIONS FOR STAFF – 1812-VAR-40 - Patzner

Kaczmarczyk: Any questions?

Sorensen: I have a question to Jackie. Why is having to come before us again for another variance if you know he is in the process of moving but he can’t because of the construction right now?

Nester Jelen: That is a good question Vicky. It was continued at the November Meeting to this meeting as the next follow up and so because they are not officially moved out of this location if could be active enforcement if it were denied at tonight’s meeting. So, in order to keep with the recommendation from the last meeting to now we are just hopefully bridging that gap and then the case is mute once he has moved the business and you won’t see it any more.

Sorensen: Ok, thank you.

Kaczmarczyk: Ok, is the petitioner here is evening?

Nester Jelen: I don’t see them on Mary Beth at this point.

Kaczmarczyk: Ok, that is unusual. Do we have any indication as to when they will be complete with the construction and when he will be able to move out of this building?

Nester Jelen: Very soon. My understanding is that most of the building is complete and the main issue is that staff had was that they were doing some earth moving kind of later because of the

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weather conditions to do things like the commercial septic and things like that so there were just some areas that weren't final graded and stock piled and it just wasn't ready for the public or employees frankly to locate the business there yet. So, we are thinking if not this month or next month they should be able to get it all completed.

Guerrettaz: Jackie, what is the date the BZA agenda date for June?

Nester Jelen: That would be June 2<sup>nd</sup>.

Guerrettaz: What?

Nester Jelen: June 2<sup>nd</sup>.

Guerrettaz: Does staff reasonably think that by because I, the public doesn't understand how much effort puts in sometimes to these projects and looks at the list of continuous and how they are working with Mr. Patzner to keep his business working while moving to a site that is permitted this is a great example so I commend staff for all of their hard work on this because I know this is one of those things they have not been able to shake and they have been working closely. So, my question to you, Jackie is does staff believe that by June or July that they will be moved?

Nester Jelen: Yes.

Guerrettaz: Ok, so what is the date for the July meeting?

Kaczmarczyk: I am thinking the same thing you are Bernie.

Nester Jelen: July 7<sup>th</sup>.

Guerrettaz: Ok and that would be just to give my colleagues a heads up that would be something I would put in my motion if I was to make a motion on this petition this evening. I don't have any other questions. As long as staff is confident that there are legitimate reasons and he is not dragging his feet and he is working in the spirit of what we have been trying to do to keep him moving then I am ready to make a motion once we go back to the public and see if there is anybody speaking against the petition.

Kaczmarczyk: Alright the petitioner is not here. Is there anybody else here to speak on behalf of the petition? Seeing none. Is there anybody here that would like to speak against the petition? Seeing none. Bernie you have a motion?

**PETITIONER/PETITIONER'S REPRESENTATIVE – 1812-VAR-40 – Patzner: None**

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

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

**REMONSTRATORS - 1812-VAR-40 – Patzner: None**



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

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

**Guerrettaz: In respect to case number 1812-VAR-40, Chapter 802 Use Variance, General Contractor for Neal Patzner at 5605 South Old State Road 37, I move that we continue this petition to the July 7, 2021, regular meeting of the Board of Zoning Appeals.**

Kaczmarczyk: I **second** that motion. Larry, you want to call the roll just for the record. You are on mute Larry.

Wilson: Mary Beth Kaczmarczyk?

Kaczmarczyk: Yes.

Wilson: Vicky Sorensen?

Sorensen: Yes.

Wilson: Bernie Guerrettaz?

Guerrettaz: Yes.

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

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

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### NEW BUSINESS

1. 2102-VAR-10 **Morris Minimum Lot Size Variance to Chapter 804**
2. 2102-VAR-11 **Morris Buildable Area (15% Slope) Variance to Chapter 804**  
One (1) 1.41 +/- acre parcel in Perry Township, Section 34 at 1680 E Sanders Second AVE. **Zoned CR, ECO3.**  
Contact: [acrecelius@co.monroe.in.us](mailto:acrecelius@co.monroe.in.us)

**BOARD ACTION:** Kaczmarczyk introduced the petition.

### STAFF ACTION:

Crecelius: Thank you Mary Beth. This petition is for a Minimum Lot Size and a Buildable Area Variance. The property is located in Perry Township, Section 34. The address is 1680 East Sanders Second Avenue. This is a quick summary of the 2 requests. The property is 1.41 acres. It is zoned Conservation Residential. The CR zoning does require a 5 acre minimum lot size. Additionally, the majority of the lot contains slopes over 15 percent. It is Conservation Residential and ECO Area 3. Luckily, it really doesn't get into the 18 percent. There is an existing home on the property. It is pretty dilapidated and there are a couple of small sheds. The petitioner's want to demolish the existing house and rebuild a little farther back from the road. Like I stated it is in the small town of Sanders, zoned Conservation Residential and ECO Area 3. The Comprehensive Plan does designate this as within the Designated Communities or sometimes refer to it as Rural Communities Area. I took the petitioner's submitted site plan and went ahead and geo-referenced it so that we could see the contours and the slope percentage here. It is not quite right. It is located a little more, this looks a lot more yellow right now but I the contours are kind of shifted. The house is mainly in just buildable or just over buildable area, so under 18, over 15 percent slope. Staff likes this idea because the existing house is basically right off of the road. It is within the setbacks. There is a little bit of buildable area where the existing house is but it's not a ton and the majority of the site is sloped so we found that to be a practical difficulty. Staff is recommending approval for both of the design standards variances subject to the County Highway reports and the MS4 Coordinator reports. Does anybody have any questions?

### RECOMMENDED MOTION:

**Approve** the design standard variance from the Minimum Lot Size requirement of Chapter 804 of the Monroe County Zoning Ordinance based on the findings of fact and subject to County Highway and MS4 Coordinator reports.

**Approve** the design standard variance from the Buildable Area (15% Slope) requirement of Chapter 804 of the Monroe County Zoning Ordinance based on the findings of fact and subject to County Highway and MS4 Coordinator reports.

### 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 is 1.41 +/- acres and is zoned Conservation Residential (CR) and Environmental Constraints Overlay Area 3(ECO3);
- The CR zone requires a 5 acre minimum lot size unless previously subdivided under the Sliding Scale Subdivision process;
- The site contains a Single Family Residential structure constructed in 1950;
- There are no visible karst features on the site;
- The petition doesn't contain FEMA floodplain;
- The existing SFR structure is pre-existing non-conforming due to the close proximity (approx. 15') from E Sanders Second Ave;
- Approval of this variance would allow the home to be demolished and rebuilt, or expanded up to 25% of its current livable space under Chapter 803;
- **Conclusion:** The approval **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 site is accessed off of E Sanders Second Ave., a Local road;
- The existing SFR is approximately 15' from E Sanders Second Ave;
- Demolishing and rebuilding the SFR farther from the road would increase the conformity of the property due to setback from E Sanders Second Ave;
- The site has access to water and the petitioners are proposed to install a new 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 use of the petition site and adjacent properties are residential;
- The character of the surrounding properties consists of single family residential and commercial use to the west;
- The 2012 Comprehensive Plan identifies this area as a "Designated Community";
- The plan states that new growth and development should be focused "within and near the core of the existing community";

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- **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 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 Minimum Lot Size 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);
- The proposed construction would not expand the footprint of the home, therefore no change is expected to the site drainage;
- **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);
- The SFR and utility shed was constructed in 1950 per the property report card;
- This variance is the minimum required to demolished and rebuild a SFR;
- The existing home is pre-existing non-confirming within the front setback and would only be able to remodel and/or expand up to 25% of the livable space under Chapter 803;
- **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: 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:**

- The site is 1.41 +/- acres and is zoned Conservation Residential (CR) and Environmental Constraints Overlay Area 3(ECO3);
- The CR zone requires a 5 acre minimum lot size unless previously subdivided under the Sliding Scale Subdivision process;
- The site contains a Single Family Residential structure constructed in 1950;
- There are no visible karst features on the site;
- The petition doesn't contain FEMA floodplain;
- The existing SFR structure is pre-existing non-confirming due to the close proximity (approx. 15') from E Sanders Second Ave;
- Approval of this variance would allow the home the be demolished and rebuilt, or expanded up to 25% of its current livable space under Chapter 803;
- **Conclusion:** The approval **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 is accessed off of E Sanders Second Ave., a Local road;
- The existing SFR is approximately 15' from E Sanders Second Ave;
- Demolishing and rebuilding the SFR farther from the road would increase the conformity of the property due to setback from E Sanders Second Ave;
- The site has access to water and 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 Section A(1);
- The use of the petition site and adjacent properties are residential;
- The character of the surrounding properties consists of single family residential and commercial use to the west;
- The 2012 Comprehensive Plan identifies this area as a “Designated Community”;
- The plan states that new growth and development should be focused “within and near the core of the existing community”;
- **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 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 Section A(1), A(2), A(3);
- The variance from slope requirements only applies to the proposed SFR structure. Any future expansion on this site into areas greater than 15% slope would require another

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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;
- The petitioner would be unable to relocate the proposed SFR in buildable area without also needing a setback variance due to proximity to E Sanders Second Ave;
- 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.

**DRAFT**

**QUESTIONS FOR STAFF – 2102-VAR-10 & 2102-VAR-11 - Morris**

Kaczmarczyk: Does anybody have any questions for Anne? Is the petitioner here?

**PETITIONER/PETITIONER'S REPRESENTATIVE –  
2102-VAR-10 & 2102-VAR-11 – Morris**

Morris: Yes, we are here.

Kaczmarczyk: Would you like to say anything?

Morris: We are just really listening. We don't know how this all works out.

Kaczmarczyk: You don't have to speak if you don't want to. That is fine unless the BZA members have a question for the petitioner at all. Any questions for the petitioner, guys? No. Ok. Is there anybody else here that wishes to speak on behalf of this petition? Anybody that wishes to speak against the petition? Seeing none. We are ready for a motion.

**SUPPORTERS – 2102-VAR-10 & 2102-VAR-11 – Morris: None**

**FURTHER SUPPORTERS – 2102-VAR-10 & 2102-VAR-11 – Morris: None**

**REMONSTRATORS - 2102-VAR-10 & 2102-VAR-11 – Morris: None**

**ADDITIONAL QUESTIONS FOR STAFF – 2102-VAR-10 & 2102-VAR-11 – Morris**

Guerrettaz: I have one question of Anne. So, the existing house is, that has not been demolished, correct?

Crecelius: Correct.

Guerrettaz: Are they going to live in the house while they are building the second house?

Crecelius: I don't have any plans for that. Normally that takes a little bit of communication with Planning Staff just so we can technically have 2 residences permitted. So, they can clarify but I have heard that is not their intention. I know that is to demo and then to build.

Guerrettaz: Ok.

Morris: We do not intent on living in it as we build.

Guerrettaz: Ok, so we don't need to put anything in the motion that prior to the Occupancy Permit of the new home that the existing home needs to be demolished or ...

Crecelius: No, not needed.



**DRAFT**

Guerrettaz: Ok.

Crecelius: Thank you.

**FURTHER QUESTIONS FOR STAFF – 2102-VAR-10 & 2102-VAR-11 – Morris**

**Guerrettaz: Case Number 2102-VAR-10, Minimum Lot Size Variance and Case Number 2102-VAR-11, Buildable Area to Chapter 804, located at 1680 East Sanders Second Avenue, I am going to do both of these at the same time if that is ok Mary Beth.**

Kaczmarczyk: That is fine.

**Guerrettaz: I move that we approve the Design Standards Variance 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 County Highway and MS4 Coordinator reports and also that we approve the Design Standards Variance from the Buildable Area, 15 percent Slope requirement of Chapter 804 of the Monroe County Zoning Ordinance, based on the findings of fact and subject to the County Highway and MS4 Coordinator reports.**

Sorensen: **Second.**

Kaczmarczyk: Call the roll, Larry.

Wilson: The motion is on variances 2102-VAR-10 and 2102-VAR-11, Morris Minimum Lot Size Variance to Chapter 804 and the Morris Buildable Area Variance to Chapter 804, respectively for the property at 1680 East Sanders Second Avenue. A vote to approve is a vote to approve, a yes vote is a vote to approve both variances subject to the conditions in the motion. Vicky Sorensen.

Sorensen: Yes.

Wilson: Bernie Guerrettaz?

Guerrettaz: Yes.

Wilson: Mary Beth Kaczmarczyk?

Kaczmarczyk: Yes.

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

**The motion in cases 2102-VAR-10, Morris Minimum Lot Size Variance to Chapter 804 and 2102-VAR-11, Morris Buildable Area (15% Slope) Variance to Chapter 804, in favor of approving the variances, carried unanimously (3-0).**

**DRAFT**

**NEW BUSINESS**

**3. 2102-VAR-12 Burns Front Yard Setback Variance to Chapter 833**

One (1) 1.11 +/- acre parcel in Bloomington Township, Section 31 at 3519 W Vernal PIKE. **Zoned RS3.5.** Contact: [tberhman@co.monroe.in.us](mailto:tberhman@co.monroe.in.us)

**BOARD ACTION:** Kaczmarczyk introduced the petition.

**STAFF ACTION:**

Behrman: I am going to be a burden here. I am going to need staff help. My Power Point presentation will not pull up on my laptop so I am going to need someone to assist, share a screen and go through my slides for me. I apologize. Chrome wanted me to do an update and I am afraid to do that so close to my presentation. Jackie, thank you. This is the Burns Front Yard Setback Variance to Chapter 833. It is a 1.11 acre parcel in Bloomington Township, Section 31 at 3519 West Vernal Pike. It is zoned RS3.5. There is the location just outside the City of Bloomington. The request is for a Design Standard Variance for a Front Yard Setback. The petitioners have a pre-existing nonconforming house right now that encroaches 18' into the 65' setback on West Vernal Pike. It is currently zoned RS3.5. Those are the green. We have a little bit of residential that is along West Vernal Pike there but the majority of this district is quite industrial with a lot of businesses, a lot of trucking around this area. The Comprehensive Plan deems it as Employment as is the existing area. We are seeing growth in this area for employment. These are the site conditions. They do have city water, city sewer runs in front of the house thought they are not hooked up to it. West Vernal Pike is a minor collector. It has a 40 mile per hour speed limit to take note of and it was improved a few years back as a part of the I-69 improvements around the City of Bloomington and such. West Vernal Pike is definitely a connector of the east side of Bloomington to the west side of Bloomington, so it does see a considerable amount of traffic. What I have here is their existing house and their driveway configuration with a sidewalk in front that actually bumps out right toward the road there. They do have some steep slopes to contend with, especially on the east side of their house they drop off significantly. That turquoise square represents the footprint that they would like to expand. Currently, the house is 1,020 square feet and the addition would be a 2-story 24' by 30' structure that would give them an additional 1,440 square feet. It is a 140 percent addition to this house. The septic, I believe they are claiming is to the east of the house there, which is an oversight of the existing conditions. Staff did a study of the residences that are along West Vernal, they all meet the front setback requirement of 65' from the center line of the road. We have just one other one at 56' just to the west of the petition site. But the petitioners are 47' from the center line of the road and I did include in the packet and just to the right hand side there you will see a picture in 2010 of what West Vernal Pike looked like and their previous driveway configuration and now they have this improvement with sidewalks it just comes right up to their house. They took right of way. Chapter 833 is a little bit interesting in that setbacks are from the center line of the road along these minor arterials, which is different than having to be from right of way. So this would be a different story if we were having to measure it from the right of way rather than the center line. The upper picture is facing south and this gives a good view of the current parking situation right there along West Vernal Pike, 3 lanes with that center turn lane. The bottom picture was just sort of a general overview of the area facing north. These are a couple of site photos that I took back in the winter. You can see how the one car that is there kind of overhangs into the sidewalk just a bit. There is not much room to turn around. There was only one car there at the time and I am unsure how many drivers they have currently

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and how many future drivers they are going to have at this location but these are both views facing east and west along West Vernal Pike. The upper picture is the west side of the house. The Highway Department has discussed maybe putting some gravel there to provide some extra turnaround on the west side of the house and then the lower picture is the east side of the house with the bit of the drop off and then also where I think the septic tank location is though there is no information on septic at the Health Department for this property. This is the rear of the house where the addition would be added onto and that addition in a sense would be expanding the life existing pre-existing nonconforming structure that is very close to the road. The petitioner's letter was there. We have got the petitioner's letter to the side, which I hope that you had a chance to read or maybe might do that on the side there. It is explaining their situation. They continued because they were trying to gather more information and kind of set the scene for their side of what is happening here. We had them resubmit a site plan that demonstrated where to the best of their knowledge the septic system and finger system that goes with it, also the location of the nearest sewer hookup, which 197' away. They were offered to connect to back when that was being installed and they chose not to at the time and then they are also showing their driveway, that little bit of extra gravel that they are thinking about including to try to make parking safer for this site. The Highway Department, I mentioned that they, this road was improved, there was a driveway that was installed, they are not changing the use of the property so they technically not required to do any driveway improvements here from their ordinance standard. They did say they were ok with that gravel addition on the west side of the house. Septic and sewer conversations have been a bit complicated, Randy Raines has retired. He is no longer there. But I did reach out to him and he in turn reached out to City of Bloomington Utilities and did confirm that sewer was there, there was a connection and they were offered a connection at that time of installation and they turned it down. He had thought this might be a good time to require it. Planning Staff has also requested some sort of documentation from Health Department just to see where they stand on this. I know there has been some turn around and the Health Department is sometimes backed up and behind on their case load so at this time we don't have any information. I did reach out to Ryan Kasper-Cushman, who is now the Wastewater Sanitarian Section Chief, and he did not have any record of a septic system on this site, said it probably predates 1965 when they started keeping records. The house was built sometime in 1930 according to property report card. So, we just don't have a status of how that septic system is working and the exact location of it at the moment. The petitioner's did supply an estimate from one contractor stating what it would cost to connect to the sewer. Because it almost looks like it is going to be from the contours if I recall I almost goes like 197' to the east, slightly down hill and then from there I think it, well, I am going to stop there at this point but this estimate is for \$32,000. So, this is a tough one. For 2102-VAR-12, Front Setback Variance to Chapter 833, staff is recommending denial based on the findings of fact, specifically 3 findings. One of those is that we do feel that by adding to the pre-existing nonconforming structure and expanding its lifespan of the structure that without relocating the parking area it would interfere and make more dangerous and difficult and costly the use, installation, or maintenance of existing or planned transportation and utility facilities. Specifically, Chapter 806-4(C)(4) states that, all areas devoted to off-street parking shall be designed so that no vehicle is required to back into a street. Off-street parking areas exclusively serves single family detached and two family dwellings units shall be exempted from the requirement unless direct access to the dwelling unit is provided by an arterial street and this an arterial street. We do see a lot of semi-truck traffic on this road. Also, Finding A3, the conclusion is that the approval of the variance would alter the character of the property in a manner substantially departing from the

characteristics sought to be achieved and maintained in this relevant zoning. So, a couple of things, this is an Employment district for the Comp. Plan. We do have that residential use along West Vernal Pike. All of those houses meet their setback except for this one and the one directly west, though this one is the one that encroaches the furthest to that street and to that road. Finally, B2, Finding B2, there are foreseeable detrimental conditions to the use and enjoyment of other properties that would result from adding to the residence in the current location. This basically goes with that approval of the variance request without requiring municipal sewer hookup or if allowed installation of an approved on-site sewage disposal system poses a threat to public health and may adversely impact adjacent land owners. This is the recommendation and the findings that staff has at this time. I welcome any questions at this point.

**RECOMMENDED MOTION:**

**DENY** the design standards variance to Chapter 833 for Front Yard Setback based on the findings of fact specifically Findings A(2), A(3) and B(2).

**FINDINGS OF FACT: Front Yard Setback Chapter 833**

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

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

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

**Findings:**

- There is no FEMA floodplain on the site;
- There are no visible karst features on the site;
- There are no designated natural or scenic areas nearby;
- **Conclusion:** Approval of the variance would not impair the stability of a natural or scenic area.

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

**Findings:**

- See Findings A(1);
- The property contains frontage on W Vernal Pike, a Minor Arterial;
- Vernal Pike was widened during the Section 5 I-69 improvements and the petitioner did receive some compensation for property converted into right of way;
- The Vernal Pike widening reconfigured the driveway to what is shown in the site photos;
- The petitioner plans to add some gravel to the west of the existing driveway to provide a modified turnaround for parked cars;
- W Vernal Pike bridges the west side of Monroe County to the east side of Monroe County and bridges over I-69;

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- The speed limit along W Vernal Pike is 40 mph and is a 3 lane road;
- The site is serviced by a septic system;
- The Health Department has no septic information on record for this residence built in 1930;
- A municipal sewer line connection point is 197' from the petitioner's home;
- There is no survey on file for this property;
- There has been no septic system inspection or confirmation of location;
- This area is designated as 'MCUA Employment' in the Comprehensive Plan and the area continues to develop for employment uses;
- The petitioner has provided an estimate for connecting to the sewer;
- Chapter 806-4(C)(4) states All areas devoted to off-street parking shall be designed so that **no vehicle is required to back into a street**. Off-street parking areas that exclusively serve single-family detached and two-family dwelling units shall be exempted from this requirement **unless direct access to the dwelling unit is provided by an arterial street;**"
- **Conclusion:** Approval of the variance without relocation of the parking area would interfere with or make more dangerous, difficult, or costly, the use, installation, or maintenance of existing or planned transportation and utility facilities.

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

### Findings:

- See Findings A(1) and A(2);
- The property is zoned Single Dwelling Residential 3.5 (RS3.5);
- The use of the property is residential;
- The surrounding areas are residential or vacant;
- There are employment uses within a quarter mile of the petitioner;
- The Comprehensive Plan designates this area as MCUA Employment;
- Staff analyzed the thirteen residences along W Vernal Pike and only two did not meet the front setback requirement of 65' with the petitioner's residence measuring 47' from centerline and the neighboring home at 56';
- The proposed addition will not encroach any further into the existing setback;
- The addition will likely prolong the existence of this pre-existing nonconforming structure that encroaches into the front setback adjacent to a minor arterial road and has a questionable driveway configuration, septic system with no information in an area designated as 'MCUA Employment' by the Comprehensive Plan;
- **Conclusion:** Approval of the variance would alter the character of the property in a manner that substantially departs from the characteristics sought to be achieved and maintained with the relevant zoning district.

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

**Findings:**

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

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

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

**Findings:**

- See Findings A(1) and A(3);
- The purpose of the front yard setback requirement of 65' from the centerline of the road is to preserve the general character of zoning district, provide a buffer between adjacent property owners, and provide an additional buffer of safety from roadways;
- W Vernal Pike was recently improved as a part of the I-69 project and sidewalks were installed;
- Sewer was installed at the time of road improvements and the petitioners were offered a reduced price connection which they refused;
- The addition will be to the south of the house away from the road;
- The addition will likely extend the lifespan of the pre-existing nonconforming structure that encroaches into the front setback by 18';
- **Conclusion:** Approval of the variance would not significantly impact the purposes of the design.

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

**Findings:**

- See Findings A(1), A(3), and B(1);
- The Health Department has no information or documentation on the septic system;
- The addition will be on the south side of the house and the petitioner claims the septic tank and finger system are to the east of the house;
- No evidence has been presented by petitioner showing the existence or location of an approved on-site sewage disposal system on the site;
- If the septic system is damaged during construction either a repair permit or sewer connection would be required;
- The petition site drains to the south towards a vacant lot;
- **Conclusion:** There are foreseeable detrimental conditions to the use and enjoyment of other properties that would result from adding to the residence in the current location. Approval of the variance request without requiring the municipal sewer system or, if

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allowed, installation of an approved on-site sewage disposal system poses a threat to public health and may adversely impact adjacent land owners.

•

***(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:

- This house was built in 1930 prior to setback standards;
- The addition would extend the life of the pre-existing non-conforming structure that is located on a minor arterial road adjacent to a growing employment district;
- The area has changed in the last 90 years from when the house was first built to a more industrialized area with heavy truck traffic along the minor arterial road;

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 – 2102-VAR-12 - Burns

Kaczmarczyk: Are there any questions for staff? No questions. Is the petitioner here?

## PETITIONER/PETITIONER'S REPRESENTATIVE – 2102-VAR-12 - Burns

Burns: Yes we are here.

Behrman: Great.

Kaczmarczyk: Would you like to speak?

Burns: Yes, I think so.

Kaczmarczyk: Please state your name.

**DRAFT**

Burns: This is Darren Burns.

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

Burns: Yes.

Kaczmarczyk: Ok, thank you. Go ahead sir.

Burns: Alright, thank you all for being here. The first issue of the setback and the driveway situation, the driveway was technically not designed for backing out onto the road. It was designed simply for us to park the other direction, which we can do, which will facilitate use of the turnaround. The septic or sewer, we are perfectly fine with hooking up to sewer or changing our septic system. The only thing that we ask is that it would be set to a condition of occupancy permit that way we have time to seek additional financing while we do the construction project and I think that is all that I have.

Kaczmarczyk: Ok, any questions for the petitioner?

Guerrettaz: I think I have got maybe one or two Mary Beth. Hello?

Kaczmarczyk: Yeah, go ahead.

Guerrettaz: Oh, sorry. On your addition sir, are you looking at adding any bedrooms?

Burns: No sir.

Guerrettaz: I didn't catch it in the staff report but you are going to add and it is going to have a basement and then is it just going to be living space?

Burns: Yes.

Guerrettaz: How many bathrooms do you have in the current house?

Burns: One.

Guerrettaz: And you are not adding a bathroom with what you are doing here?

Burns: No.

Guerrettaz: Ok. Did you own the house when Vernal Pike was improved?

Burns: Yes.

Guerrettaz: Ok. Adding the gravel as I am looking at the plan that we have got now you are looking, you have got a gravel turnaround there on the west side of the concrete pad and right now you are not parking as intended. Is that correct?



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Burns: Correct.

Guerrettaz: Could you go back to that last sheet, yeah, there you go, thanks Tammy. I am wondering if there wouldn't be an ability to add something, so you are intending to parking so that concrete pad was designed, you are going to change that method or parking. Is that your intent?

Burns: Correct.

Guerrettaz: And I don't want to get into whether I am messing up your Building Permit plans but I am just asking the question, on the east side of your house of the existing structure that is probably going to be an area where you are going to need to bring in construction equipment and things for the house addition you are planning.

Burns: All equipment can come in on the west side.

Guerrettaz: Ok. Because the other question I have got is you show 17' from the property line to the house, have you issued any sort of Building Permit application yet so you can define exactly how far the house is going to be off of the property line?

Burns: We did initially submit a Building Permit application. That is what began this process.

Guerrettaz: Ok and was that something where you know for sure where your west property line is where you can dimension it accurately?

Burns: Yes we have the original fence lines still up.

Guerrettaz: Ok, well, what I see and I will just let my colleagues know where I am thinking on this, I mean, I see practical difficulty. I have seen this frequently where there has been improvements and I appreciate your honesty telling us that you aren't using the bump out from Vernal Pike as was originally intended and designed and that you were the individual that owned that house at the time and that you are going to start utilizing that. But I think that the practical difficulties here are the improvements of Vernal Pike. To a large extent I don't know that since this is the same house same owner, you know since Vernal Pike changed, I just would like to have a good way to rectify backing out onto Vernal Pike that is more than just you won't pull in like we are doing now and then really septic system doesn't bother me at all other than the fact I think as a part of the site plan approval don't they have to do an inspection on that Tammy?

Behrman: Not for this one because they are not claiming to add bedrooms or bathrooms, although after speaking with Ryan he felt it was pretty appropriate to maybe be reviewing the septic system.

Guerrettaz: Well, I am not asking that. I am just asking about the repair and they can just decide based on the septic. Do you see what I am saying?

Wilson: Tammy, could you pull up the proposed conditions that we prepared in case they wanted to approve or can you?

## **DRAFT**

Behrman: Jackie can. I think it is Jackie sharing the screen. Sorry.

Guerrettaz: I am incline to see the practical difficulty here on this petition and I can tell by Tammy's presentation that she sees some difficulty here too but I don't like the existing conditions not using the driveway in the manner to which it was designed with Vernal Pike's improvements. Not adding any bathrooms doesn't necessarily burden the septic supposedly over what it is but without a Repair Permit to identify if there is a problem I don't want to make that a condition where they have to hook onto sewer because I don't have the information saying there is a problem with what they have. But the petitioner has stated that they are willing to hook on which I think is a great idea personally so that maybe a moot point. So, I guess that is all that I have got right now Mary Beth. I am happy to listen to the public and then we can discuss it together again if you would like.

Wilson: Bernie I will say real quickly I don't think our concern is as much with the addition as it is with the cars backing out onto Vernal. It is the lack of any evidence that there is a functioning septic system or even where it is for sure.

Guerrettaz: And we have got kind of a solution there because if I understood the petitioner they are willing to connect onto the sewer. Is that correct? Is that right Mr. Burns?

Burns: Yes it is.

Wilson: If you look at the 2 conditions we have on the approval that we are going to suggest, take a look at those and see what you think.

Kaczmarczyk: do you see those Bernie?

Guerrettaz: Yes is see those. Thank you.

Kaczmarczyk: Alright. Is there anybody from the public that would like to speak on behalf of the petition? Seeing none. Is there anyone here that would like to speak in opposition to this petition? Seeing none. Bernie did you have a motion?

**SUPPORTERS – 2102-VAR-12 – Burns: None**

**FURTHER SUPPORTERS – 2102-VAR-12 – Burns: None**

**REMONSTRATORS - 2102-VAR-12 – Burns: None**

**ADDITIONAL QUESTIONS FOR STAFF – 2102-VAR-12 – Burns: None**

Guerrettaz: Yeah I can try.

Sorensen: Can I ask a question?

Kaczmarczyk: Yes.

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Sorensen: In looking at the property so where would you put a new parking area? Everything looks so close together?

Wilson: They can pull construction equipment I guess along the west side to go to the back of the lot they can certainly drive cars back there to park.

Sorensen: Ok.

Wilson: I would think.

Guerrettaz: Well, I might have a fix for that too.

Wilson: Ok.

Kaczmarczyk: Go for it Bernie.

## FURTHER QUESTIONS FOR STAFF – 2102-VAR-12 - Burns

Guerrettaz: **In the matter of case number 2102-VAR-12, Design Standards Variance from Chapter 833 Front Yard Setback, located at 3519 West Vernal Pike, I move that we approve the design standards variance based on the findings of fact and subject to the MS4 and the Monroe County Highway Department with the following conditions;**

- 1) Petitioner connect municipal sewer system.**
- 2) Parking area be located to the west side or rear of the house so that cars cannot back out onto the minor collector road, Vernal Pike.**
- 3) Building Department receive a site plan that has been laid out a licenses Land Surveyor to make sure that the position of the home is adequate to meet the ordinance. In the event there is not enough room on the west side of the house that a parking area can be put on, they have the ability to move the parking area to the east side of the home.**

Sorensen: Can I question one thing Bernie?

Guerrettaz: Absolutely.

Sorensen: On connect to the municipal sewer system, should we put in there in the event the Monroe County Health Department determines sewer connection is not feasible?

Guerrettaz: No, because the petitioner has already said that he is expecting to connect to the sewer.

Sorensen: Ok.

Guerrettaz: So, I think that is taking the Monroe County Health Department out of the equation.

Sorensen: Ok, thank you.

**DRAFT**

Guerrettaz: Staff, Tammy, are you ok with that assessment?

Behrman: Yes my only concern is that I have heard that sometimes, I am not part of the Health Department but I have heard that if the estimate is a significant amount of a certain amount that they might consider septic being still a reasonable option. In which case a Repair Permit might be valid. We just don't have enough information. We are just missing that communication with the Health Department.

Wilson: One of the issues is that there is actually a legal requirement to connect to sewer if it is available within 300' I think or 300 yards or something like that.

Guerrettaz: I think it is 400'.

Wilson: So, they are really obligated to hook on. There may be some exemptions for that under certain circumstances. But basically if there is a sewer in front of your house you need to hook on basically as state regulation.

Guerrettaz: Well, I will leave it the way that I have it and if based on that the petitioner again since he has agreed he has plans to do that. So I am assuming he knows what the cost is, that he can always bring it back for another variance petition and I don't necessarily want to put him through that but I am just trying to reconcile what we have in front of and work with the best information we have. I do think practical difficulties are there with Vernal Pike, so I think I am ok with what I have got.

Sorensen: I will **second** that.

Kaczmarczyk: Larry, please call the roll.

Wilson: The motion is on variance 2102-VAR-12, Burns Front Yard Setback Variance from Chapter 833 for the real estate located at 3519 West Vernal Pike. The motion is to approve the variance subject to the following conditions;

- 1) Petitioner connect municipal sewer system.
- 2) Parking area be located to the west side or rear of the house so that cars cannot back out onto the minor collector road, Vernal Pike.
- 3) Building Department receive a site plan that has been laid out a licenses Land Surveyor to make sure that the position of the home is adequate to meet the ordinance. In the event there is not enough room on the west side of the house that a parking area can be put on, they have the ability to move the parking area to the east side of the home.

A yes motion is a motion to approve with those conditions. Mary Beth Kaczmarczyk?

Kaczmarczyk: Yes.

Wilson: Vicky Sorensen?

Sorensen: Yes.

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Wilson: Bernie Guerrettaz?

Guerrettaz: Yes.

Wilson: The variance is approved 3 to 0 with the conditions set forth.

**The motion in case 2102-VAR-12, Burns Front Yard Setback Variance to Chapter 833, in favor of approving the variance, with the conditions as set forth in the motion, carried unanimously (3-0).**

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### NEW BUSINESS

#### 4. VAR-21-16

**Curry Buildable Area (15% Slope) Variance to Chapter 804**

**Curry ECO Area 1 (12% Slope) Variance to Chapter 825**

One (1) 3.59 +/- acre parcel in Bloomington Township, Section 22 at 3595 N Hinkle RD. **Zoned RE2.5 / ECO Area 1.**

Contact: [dmyers@co.monroe.in.us](mailto:dmyers@co.monroe.in.us)

**BOARD ACTION:** Kaczmarczyk introduced the petition.

#### **STAFF ACTION:**

Myers: Hi, everyone. Can you hear me ok?

Nester Jelen: Yes.

Kaczmarczyk: Yes we can.

Myers: Great. Alright. This is VAR-21-16, the Curry Buildable Area and ECO Area 1 Variance Chapters 804 and 825 respectively. This property is located at 3595 North Hinkle Road. It is adjacent to Lake Griffy Nature Area. It is zoned Estate Residential 2.5. It is also in ECO Area 1 zone. The township is Bloomington and it is in Section 22. To start off this petition site is technically a 6.71 acre property split into 2 tracts by deed. Both tracts are on one deed, listing as 3.59 acres for one of the tracts and 3.12 for the other. Now, the structure in question during this presentation will be on the tract that is 3.59 acres. Overall, the petitioner is requesting 2 design standards variances with the purposes of restoring/renovating the existing approximately 656 square foot single family residence. They plan to expand its footprint by 81 square feet and as well as construct a new elevated deck attached to the structure. The existing residence is classified as pre-existing nonconforming because it is in sloped areas greater than 15 percent per Chapter 804 as well as sloped areas greater than 12 percent per Chapter 825. Here we have the location map. You will note that the red polygon here is the tract with the 3.59 acres and the property immediately to the east of that is also part of this same property, technically. They are both on the same deed as separate tracts but right here I just have highlighted the one that has the structure on it. Here we have the zoning map as well as the Comprehensive Plan map. As I stated before, it is zoned RE2.5. The Comprehensive Plan has it designed at Farm and Forest. Here we have a location map as well as a slope map. As a stated before there is an existing single family dwelling on the property. The site receives access off of North Hinkle Road, which is designated as a local road. There is no DNR or FEMA floodplain on the petition site and there are no known karst features as well. It is located in Area 1 of the Environmental Constraints Overlay with respect to the Griffy Lake Watershed and the majority of the petition site does exhibit slopes greater than 12 percent and 15 percent for the relevant zoning chapters. Now, I will go through some site photographs here. This is the driveway cut coming off of North Hinkle Road and here we are some more site photographs coming up the driveway to the home that is currently on the property. The next few photographs will be going around the home looking at the sloped areas as well as the existing deck that they have and getting an idea of what the structure looks like as it stands currently. You can kind of get an idea for where the sloped areas are in these pictures here. In that top left photograph here of that tree, you can slightly see Lake Griffy there in the background so it is above Lake Griffy and it has a little bit of a view of the lake. Here we have the petitioner's letter to the Board of Zoning Appeals

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stating their intention to do the renovation and expansion of the property. They want to renovate it so that it is a more livable space as well make it a forever home. As they have stated in conversation it is currently not very livable and it is in desperate need of some renovations to become a place where they can stay year round. Here we have some exhibits that are also included in the staff packet. This one shows Tract 1 and Tract 2 respectively for this particular property. You will see that Tract 1 is where the existing home site is the driveway that comes up here off of North Hinkle Road and then there is this rectangle here that show this detailed survey map, which will be on the next few pages. So, this was a little bit more detailed showing some sloped contours as well as their plans to expand the existing structure with the 81 square feet of addition as well as the pillars that they are planning on using in order to construct the new elevated deck area for this structure. Now, we did receive some remonstrance. I believe that there are some members of the public on the call tonight that would like to speak in regards to this petition. Specifically for this one, we received this this afternoon. Richard Martin provided some information that he felt was important to discuss for this particular petition and you can see that here in red text that he has added to the staff findings of the petition. I have a full list of the other findings that he felt needed to be amended to the staff report. We can go over those if you would like to but those there were just a summary of what they felt like should be done for the property with respect to staff's recommendation as well as the variances themselves. Here we have the staff recommended motion. Staff recommends approval of both the design standards variances the Buildable Area 15 percent slope requirement of Chapter 805 and the ECO Area 1, 12 percent slope land disturbance restriction of Chapter 825 of the Monroe County Zoning Ordinance, based on the findings of fact and subject to the following conditions;

- 1) Approval of a Building Permit by Monroe County Building Department
- 2) Proof of compliance with State and Monroe County requirements for domestic water supply and on-site sewage disposal.

That last one is in respect to conversations I have had with the petitioners regarding the need to have a water line ran to home site as well as figuring out what they are going to be doing with regards to septic and those sorts of things. Now, I will ask if anyone has any questions.

### **RECOMMENDED MOTION:**

**Approve** both the design standard variances from the Buildable Area (15% slope) requirement of Chapters 804 and the ECO Area 1 (12% slope) land disturbance restriction of Chapter 825 of the Monroe County Zoning Ordinance and based on the findings of fact, and subject to the following conditions:

1. Approval of a Building Permit by Monroe County Building Department
2. Proof of compliance with State and Monroe County requirements for domestic water supply and on-site sewage disposal.

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

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

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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:**

- The petition site is 3.59 +/- acres;
- The petition site is located within the RE2.5 Zone and Area 1 of the Environmental Constraints Overlay;
- The site currently contains a 656 sq. ft. single family residence;
- Approval of the variance would allow the petitioner to renovate/restore the existing residence, expand its footprint by 81 sq. ft., and construct a new elevated deck that will encroach into areas greater than 12 and 15 percent slope;
- Lake Griffy is adjacent to the southwest of the petition site;
- The submitted site plan proposes the removal of several trees on the property;
- 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 N Hinkle Road, a designated local road;
- A new water line is proposed to be constructed up the existing driveway;
- The connection of this proposed water line to existing services relies on an easement agreement with the adjacent neighbor;
- Conclusion: It would **not interfere** with or make more dangerous, difficult, or costly, the use, installation, or maintenance of existing or planned transportation and utility facilities.

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

**Findings:**

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

*(4) It would adequately address any other significant public health, safety, and welfare*



*concerns raised during the hearing on the requested variance;*

**Findings:**

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

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

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

**Findings:**

- See findings under section A;
- Any proposed renovations or additions to the existing structure would likely require a buildable area variance (15% slope) and a ECO Area 1 variance (12% slope);
- The petition site and adjacent properties are a residential use or owned by the City of Bloomington;
- The adjacent properties are held to the same standards as these variance requests (Chapters 804 and 825);
- Conclusion: The use and value of the area adjacent to the property included in the variance will **not** be affected in a substantially adverse manner.

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

**Findings:**

- See Findings under Section A and B(1);
- The property drains to the north, west, and south (i.e. towards Lake Griffy);
- There is no FEMA floodplain on site;
- There are no visible karst features on the site;
- Conclusion: It **will not** promote conditions detrimental to the use and enjoyment of other properties;

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

**Findings:**

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

**(C) The approval, including any conditions or commitments deemed appropriate, is the minimum variance necessary to eliminate practical difficulties in the use of the**

**property, which would otherwise result from a strict application of the terms of the Zoning Ordinance.**

**Findings:**

- There are practical difficulties in that the existing structure is already located in non-buildable area that is greater than 12% and 15% slope. In order to construct any additions to the existing residence both a buildable area variance and ECO Area 1 variance are required. Any alternative that involves the demolition of the existing residence and reconstruction in more buildable areas on the property would likely result in more land disturbance overall;
- Conclusion: There **are practical difficulties** in the use of the property as defined in Chapter 801;

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

**FINDINGS OF FACT: Environmental Constraints Overlay Area 1 (ECO 1)(12% Slope)**

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

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

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

**Findings:**

- The petition site is 3.59 +/- acres;
- The petition site is located within the RE2.5 Zone and Area 1 of the Environmental Constraints Overlay;
- The site currently contains a 656 sq. ft. single family residence;
- Approval of the variance would allow the petitioner to renovate/restore the existing residence, expand its footprint by 81 sq. ft., and construct a new elevated deck that will encroach into areas greater than 12 and 15 percent slope;
- Lake Griffy is adjacent to the southwest of the petition site;
- The submitted site plan proposes the removal of several trees on the property;
- 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 N Hinkle Road, a designated local road;
- A new water line is proposed to be constructed up the existing driveway;
- The connection of this proposed water line to existing services relies on an easement agreement with the adjacent neighbor;
- Conclusion: It would **not interfere** with or make more dangerous, difficult, or costly, the use, installation, or maintenance of existing or planned transportation and utility facilities.

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

**Findings:**

- See findings under A(1) and A(2);
- The proposal would meet all other Chapter 804 design standards;
- The ECO Area 1 Overlay restricts any land disturbance, soil or vegetation, in areas that exceed 12% slope;
- 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;
- Any proposed renovations or additions to the existing structure would likely require a buildable area variance (15% slope) and a ECO Area 1 variance (12% slope);
- The petition site and adjacent properties are a residential use or owned by the City of Bloomington;
- The adjacent properties are held to the same standards as these variance requests

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(Chapters 804 and 825);

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

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

### Findings:

- See Findings under Section A and B(1);
- The property drains to the north, west, and south (i.e. towards Lake Griffy);
- There is no FEMA floodplain on site;
- There are no visible karst features on the site;
- Conclusion: It **will not** promote conditions detrimental to the use and enjoyment of other properties;

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

### Findings:

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

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

### Findings:

- There are practical difficulties in that the existing structure is already located in non-buildable area that is greater than 12% and 15% slope. In order to construct any additions to the existing residence both a buildable area variance and ECO Area 1 variance are required. Any alternative that involves the demolition of the existing residence and reconstruction in more buildable areas on the property would likely result in more land disturbance overall;
- Conclusion: There **are practical difficulties** in the use of the property as defined in Chapter 801;

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

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**QUESTIONS FOR STAFF – VAR-21-16 – Curry**

Kaczmarczyk: Any questions for Drew?

Guerrettaz: There is an onsite septic disposal system on the property. Is that correct?

Myers: I believe that there is a former site. I am not sure if it's in operation. I would need to look back at the plat. I thought something was highlighted here.

Guerrettaz: The added construction is just going to be the wood deck and maybe I missed something there is no one living in the home now.

Myers: I do not believe so. Again, the petitioner is on the call this evening so you can direct some questions to them as well for a more specific answer. Looking back at the site plan I don't believe that there is a septic site delineated for the property so that is something that would be covered in the condition of approval number 2 to make sure that we did have that on file and that there was an acceptable site for that if there isn't one already.

Guerrettaz: Ok, I can hold off Drew. I am fine Mary Beth.

Kaczmarczyk: Ok, is the petitioner here and would they like to speak?

**PETITIONER/PETITIONER'S REPRESENTATIVE – VAR-21-16 – Curry**

Curry: Yes we are here.

Kaczmarczyk: Ok. Who is going first?

Vietze: This is Dmitri Vietze.

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

Vietze: I do.

Kaczmarczyk: Alright, continue.

Vietze: Do you want to swear in Antonia in too? Because I think she is going to talk as well.

Curry: I will probably chime in.

Kaczmarczyk: Ok.

Curry: I swear to tell the truth.

Kaczmarczyk: Please state your name.

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Curry: My name is Antonia Curry and I swear to tell the truth.

Kaczmarczyk: Alright. Thank you so much.

Vietze: Thank you for taking the time to consider this variance and I think we probably do have some updates but thank you Mr. Myers for a very thorough report. I guess I just want to start off with we are aware of and have studied the Monroe Comprehensive Plan and we are trying to move forward in the spirit of that plan with a plan that is low impact, has a small footprint, and this is Antonia's first home of her memory as a child. Her parents built this house in the early 70's and it is the first home she remembers ever living in. Like a lot of people during the pandemic we spent a lot of time going out to the woods and have reconnected with the magic that is Lake Griffy in the area and we have got a 12 year old son who is spending a little too much time on YouTube and video gaming, so we want to have a chance to really have him experience the magic of Lake Griffy and this family home before he is too old too and moves away. I think there were some questions just now that were asked. There is somebody currently living there. There is a septic system and the septic system is in use and is as far as we know working. Our plan is to put a new septic system in and we would of course get a permit to do so and we think the environmental impact of a new septic system would be great in the watershed area. The current resident is a tenant and the tenant is aware that we are going to convert this back to a family use home.

Curry: This is also not a forever home. This is a small weekend retreat. So, it is going to get light use as well as hopefully light impact on the land.

Vietze: Other than that, thanks for your consideration. We will be glad to answer any questions that came up.

Kaczmarczyk: Do you have any questions, Bernie?

Guerrettaz: No, I think they did a marvelous job answering my questions. Thank you.

Kaczmarczyk: Ok, no questions. Alright. Is there anybody here that would like to speak on behalf of this petition? Seeing none. Is there anyone here that would like to speak against the petition?

**SUPPORTERS – VAR-21-16 – Curry: None**

**FURTHER SUPPORTERS – VAR-21-16 – Curry: None**

**REMONSTRATORS - VAR-21-16 – Curry**

Martin: Yes.

Kaczmarczyk: Could you state your name?

Martin: I am Richard Martin.

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

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Martin: I do.

Kaczmarczyk: Thank you sir.

Martin: I have been a resident of this area since 1968. I was actually there before this petition property structure was built. I lived just up the road that the present time. I wanted to call your attention to a couple of things that I think are problems with the property now that need to get corrected as we move forward and some findings of fact that I think are important that are missing from your report. As you are aware Griffy Lake is a recreational area that is owned by the City of Bloomington and many years ago had intense use. The city started to take better control of it because of the abuse of it and now we are seeing intense use coming in again. What I have done is to add to the findings those things that I thought were important to be considered as part of the facts of this case. There are more difficulties than the ones that have been talked about before. First is this will be a significant expansion of the footprint of the property, which is the only one that you can see from Griffy Lake. So, it is very unique in that respect and its visual intrusion into that scenic value of the lake will be considerable given that it is going to go from about 337 square feet footprint to almost 800 square feet footprint. That with the clearing of trees that is going to occur in the yard area as indicated on the site plan would make the property stand out even more than it does already. It is often hidden by the foliage but as they remove foliage and increase the size of the property it will intrude much more into the visual prospect of the lake, which many people find one of its most desirable features. There has been somebody living there for over 40 years. Certainly the property can be repaired and continue in use in its present form. It does not need to be expanded. It doesn't need to have a 28' by 16' deck put on the front of it to be used. The only practical difficulties here are those that are being presented by the petitioned because they want to expand the property. The petitioner also have options to reconfigure the 2 parcels, the 2 tracts that are in that deed to put more buildable area onto this particular tract and utilize that area as well. But they have chosen not to so the difficulties that have been identified are in large part created by the actions of the petitioner rather than the particular land form in which the building is now sited because it has been in use for 40 years, so it is there and used for that period of time. You can see in red all of the other things I think should be added as part of this. In both cases both of these petitions essentially have the same findings and I have added the same aspects to each one of them. There is a particular problem at the roadway. If you go back and you look at the first 2 photographs that were presented showing the driveway cut. When the driveway was cut into the side of the hill it exposed what I call a seep, which is a drainage which comes across the sandstone shelf which is part of this land form here and about where if you project where the sign is, the case sign is, onto the far slope, often we will see water running off of that particular part of that slope after a heavy rain. In fact if you look on the second one just past the end of the mail box you will see that darkening on the road that is evidence of where the water ends up on the road and in the winter time that freezes. So we get a slick spot on the road coming off of this and it appears to come from the seep rather than from the ditch. I think there is a culvert underneath this driveway. I am not sure. I think here is. But is it the water that comes out of that seep, which is going out onto the road rather than into the ditch and this needs to be reconfigured in such a way that that water runs into the ditch probably up here by the mail box by manipulating somehow the grade of the driveway so the water doesn't go on the road. Because in the winter time it does pose a hazard for us and that needs to be taken care of in particular. There are so many options for this use of this property without expanding that particular building and its intrusion into the scenic view of the lake that I

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think this should not be approved. Removing those trees is going to increase the erosion. There is no provision in here for something like a rain garden to deal with the added runoff you are going to get when you remove the trees. You are going to get more runoff. There is nothing in the petition that talks about how you are going to mitigate that extra runoff. The Plan Commission and BZA have in the past required things like rain gardens at the edge of the cleared area to mitigate any runoff potential. I think there are a lot of things that indicate that this is not a good idea to do this at this point in time. They can use the property as it has been used and can renovate the house and use it occasionally as was stated, they would probably do without increasing it's footprint or without put this very large deck on it, which turns out to be in square footage a footprint, as big as the house itself. We have to remember that when you do this whatever you do transcends it goes to the property, not to the people that are there. Despite what they might desire to use the property in a particular way now what you do determines what happens to the property after they are done with it as well and this is a very attractive location. This could easily become a vacation home or a cottage or a weekend rental for IU football fans. There are all kinds of things that could happen with this particular piece of property and I think that we need to be very cautious about how we treat the Griffy watershed at this point in time. It has seen so much abuse in the past that this is one of the spots that is it still fairly nice, it is very heavily used and we don't need to have more intense uses in it then we have got already. The property can be continued to be used in its present state and should be used in that way. Thank you for your attention. I will be glad to answer any questions that you might have.

Kaczmarczyk: Does anybody have any questions for Mr. Martin? No questions for Mr. Martin. Would anybody else like to speak against this petition?

Vietze: This is the petitioner. Will we have a chance to respond to this?

Curry: Or just to clarify some things that he has made assumptions of and we could tell you our intentions.

Guerrettaz: I am ok with it.

Kaczmarczyk: Ok, go ahead.

Curry: Ok. There is a couple of things that Mr. Martin said one of which is that the property can be repaired and I should have taken some photos. But the property really can't be repaired. It was built by possibly Richard was part of the building crew, my parents about 50 years ago and a whole bunch of their hippie friends and probably a whole bunch of beer and they built it out of reused things. My mom is actually so she speak more clearly to the structural integrity of the cabin but it really truly is one step up from camping. The man that lives there now, Allan, there is literally snakes that live inside the building. He co-exists with the animals. They live inside the building. So, beside the fact that structurally it was not built to withstand 50 years of use, it has been in a state of co-existence with nature for maybe the past 20 years. So, it is truly not functionally able to be renewed. It's had its lifespan. So, that is just one thing I kind of wanted to clarify and I really do wish I had some interior pictures but. The other thing I wanted to say is about the trees. We have no intention of clearing the trees. I have zero interest in the lake view. That is not at all my jam. What we want is to be invisible as much as possible. There are 3 trees, 2 of which are actually



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literally touching the cabin right now so even if we didn't do this project we would have to at least cut down those 2 trees because it is dangerous for the person who lives there and then there is another one on the back that isn't actually touching but is close enough that is also creating a dangerous situation. Yeah, that one. I mean, it is just by pure luck that no giant limbs have crashed through the roof, which I don't think you can see but it is metal, rusty metal. In terms of clear cutting trees or chopping down a whole bunch of trees to get a view or that is absolutely not what we want or hope for in the least. Also, it is not a significant expansion. We are asking for 81 square feet to put a stair case. The stair case that is in there now is basically like a ladder and when I lived there as a child I fell down it multiple times. I broke my collar bone, I broke my elbow so just functionally we need some kind of stair case. 81 square feet is just a tiny amount of footprint add to what is already a tiny little house. Functionally, it is absolutely not a forever home. We are not going to have frat parties there. It is truly a tiny little place for us to go and be in the woods. Do you want to say something?

Vietze: Yes. This is Dmitri. The only other thing I wanted to add was there was an implication that we could reorganize this to go someplace else but as Mr. Myers on the Planning staff pointed out, the lowest impact on the land would be to use the existing space. In fact, we wanted to use the existing foundation from the beginning we worked with Spring Point Architects and the first thing we said was we want to stay as close to the existing footprint as possible so that we can be within the spirit of the Monroe Comprehensive Plan. The idea of oh, reconfiguring the land or all of these things is actually I think more damaging and would create more problems as well. We don't believe that the few trees that we need to remove just to make this a safe and similarly sized home will have significant impact that the other community member commented on as well.

Curry: Feel free to ask us some questions to.

Kaczmarczyk: Anybody have any questions for the petitioner?

Sorensen: I have a question. Have you ever consulted with the County Highway Department on the water that is flowing across that some kind of drainage ditch come be put in as part of county's problem and part of your problem?

Curry: I have spoken with Ben Ayes multiple times and so he is very familiar with this process that we are going through and he has not mentioned drainage issues.

This is the first we have heard of it.

Curry: This is the first we have heard of it and I am not sure it is necessarily sole something that is happening on this one driveway in all of Monroe County but you know I get that it is happening with ours and that we could figure out how to make it not an unsafe driveway.

We are not going to want ice or gravel or whatever is happening according to Mr. Martin at the end of our driveway. We have to pull out there. We want it to be safe too. If something is going on that is a separate conversation about whether we can zoning variance, we will take care of it. We have got kids. It is not an easy road to pull out onto but we have done it for decades at this point and of course we will address anything like any good citizen would.

**DRAFT**

Sorensen: Thank you.

Kaczmarczyk: Thank you. Is there anyone else here that would like to speak against this petition? Seeing none. Does anybody have a motion ready?

**ADDITIONAL QUESTIONS FOR STAFF – VAR-21-16 – Curry**

Guerrettaz: I have got a quick question Mary Beth for Drew.

Kaczmarczyk: Ok.

Guerrettaz: Drew, refresh my memory on the Highway Department's recommendation for the petition.

Myers: One second let me pull that up here.

Guerrettaz: Thank you. I couldn't get it without messing up my screen, I tried. Thank you. While we are looking, I understand that the petitioner said that they are looking to repair or install a septic system on the site. Is that correct?

Curry: That is correct. My mom had been planning to build a house maybe 2012...

Guerrettaz: Thank you that covered me, thank you very much.

Myers: I haven't found it yet.

Guerrettaz: I don't remember any ridged requirements from the Highway Department and that is what I wanted to confirm. Sorry to delay, let me look at another device here.

Nester Jelen: I don't know that we typically get a report from Ben for BZA.

Myers: That was what I was starting to wonder was why I can't seem to locate it in my email.

Guerrettaz: Ok, that is probably why I couldn't find it.

Kaczmarczyk: Any other questions Bernie?

Guerrettaz: No that's it.

Kaczmarczyk: Ok, Vicky, anybody want to make a motion?

Guerrettaz: I can.

Kaczmarczyk: Go for it.

**DRAFT**

**FURTHER QUESTIONS FOR STAFF – VAR-21-16 – Curry**

**Guerrettaz: In the matter of case number VAR-21-16, this is a design standard variance from Chapter 804 for Buildable Area and a design standard variance per Chapter 825 for the Environmental Constraints Overlay Area 1 at 3595 North Hinkle Road, I move that we approve both of the design standard variances from the Buildable Area requirement of Chapter 804 and ECO Area 1 land disturbance restriction of Chapter 825 of the Monroe County Zoning Ordinance, based on the findings of fact and subject to the following conditions;**

- 1) Approval of a Building Permit by Monroe County Building Department.**
- 2) Proof of compliance with State and Monroe County requirements for domestic water supply and on-site sewage disposal.**
- 3) The Highway Department inspect the driveway and note the necessity of a driveway culvert being installed under the driveway at its intersection with Hinkle Road.**

**Sorensen: Second.**

Kaczmarczyk: Larry, please call the roll. Larry?

Wilson: I am sorry, my mouse was not finding my mute button.

Kaczmarczyk: Got it.

Wilson: The vote is on variance VAR-21-16, Curry Buildable Area Slope Variance to Chapter 804 and Curry ECO Area 1, variance from Chapter 825 to the property located at 3595 North Hinkle Road. The motion is to approve both variances based upon the design standards, based upon the findings of fact and subject to the following conditions;

- 1) Approval of a Building Permit by Monroe County Building Department.
- 2) Proof of compliance with State and Monroe County requirements for domestic water supply and on-site sewage disposal.
- 3) The Highway Department inspect the driveway and note the necessity of a driveway culvert being installed under the driveway at its intersection with Hinkle Road.

Does that work for everyone?

Kaczmarczyk: That works.

Wilson: Again, a motion I favor is a vote to approve both variances with conditions. Vicky Sorensen?

Sorensen: Yes.

Wilson: Bernie Guerrettaz?

Guerrettaz: Yes.

Wilson: Mary Beth Kaczmarczyk?

**DRAFT**

Kaczmarczyk: Yes.

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

**The motion in case VAR-21-16, Curry Buildable Area (15% Slope) Variance to Chapter 804, and Curry ECO Area 1 (12% Slope) Variance to Chapter 825, in favor of approving the variances, with conditions attached to motion, carried unanimously (3-0).**

## DRAFT

### NEW BUSINESS

#### **5. VAR-21-17      Patrick and Ilene Adams c/o Norbert Garvey Eco Area 1 (12% Slope) Variance to Chapter 825**

One (1) 5.01 +/- acre parcel in Clear Creek Township, Section 36 at 5337  
E Prince RD. **Zoned FR, ECO 1.** Contact: [rpayne@co.monroe.in.us](mailto:rpayne@co.monroe.in.us)

**BOARD ACTION:** Kaczmarczyk introduced the petition.

#### **STAFF ACTION:**

Payne: Hi, good evening everyone.

Guerrettaz: Good evening.

Payne: Sorry, trying to get organized here and share screens. Ok, here we go. This is Variance 21-17. It is a request to the 12 percent slope requirement related to Chapter 825 for parcels that fall inside Environmental Constraints Overlay Areas. This is for one parcel that contains 5 acres located at 5337 East Prince Road in Heltonville. That is in Section 36. The reason for the request is construct a 30' by 36' detached garage that will provide parking for Elder Care Providers and also for a specialized RV that the petitioner's intent to use as they age. The request for a variance is necessary because a portion of the proposed garage will be built on slopes greater than 12 percent. The parcel is currently zoned Forest Reserve. It is pretty well sloped across the parcel and that includes both 12 percent slope and 15 percent slope. Regarding the site conditions there are no signs of karst features and this property is currently on septic. The Comprehensive Plan has this parcel designated as Rural Residential. Looking at site photos here, the picture on the left is looking west toward Lake Monroe and where that tank is essentially is where the front of the garage will be located. The picture on the right is just the opposite. It is a mirror image, so now I am looking east trying to capture any slope present there. This is an interesting site because where the petitioner is proposing to put the garage is actually not as sloped. It actually sloped down gradually and then it dips down quite a bit toward the lake but where they are wanting to put the garage it is less sloped. The picture on the left is the existing single family residence that is present on the lot. The picture on the right is the notice sign. This is a very quiet road. It is a local road. It dead ends and beyond the petitioners house and toward the dead end portion of the road are just 2 other residences. This is the site plan the petitioner submitted. Can you guys see my mouse, my cursor? Ok, great. This is the single family residence that has been here since the 90's. This is the proposed new garage. On this side of the house is there septic field and then going west toward the lake it is quite sloped. Our recommended motion is to approve the design standard variance to Chapter 825-4 (C) (1) based on the findings of fact. In this case staff did find that there is practical difficult in the use of the property just considering the configuration of the lot, the existing house and septic system and slopes, all come together to create a hardship for the petitioner and really in this case there was no other suitable place to locate the garage. Again, the garage is part of their overall plan to stay longer in the house and aging place. With that, I will take any questions.

#### **RECOMMENDED MOTIONS:**

**Approve** the Design Standards Variance to Chapter 825-4(C) (1) based on the findings of fact.

**FINDINGS OF FACT:**

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

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

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

**Findings:**

- Approval of the variance would allow the petitioner to construct a detached garage on a portion of slopes greater than 12% in Area 1 of the Environmental Constraints Overlay;
- Approval of the variance would allow the petitioner to remove vegetation during the construction of the garage;
- The site has no FEMA floodplain;
- The proposed new garage will measure 30' x 36';
- 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 E Prince RD, a paved road, classified as a local;
- E Prince is a dead-end road;
- The site maintains a septic system;
- The request does not impact transportation or utility facilities;
- Conclusion: It would not interfere with or make more dangerous, difficult, or costly, the use, installation, or maintenance of existing or planned transportation and utility facilities;

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

**Findings:**

- See Findings under Section A(1);
- The site is zoned Forest Reserve (FR) and Environmental Constraints Overlay Area 1 (ECO1);
- The character of the Forest Reserve (FR) District is defined as that which is primarily intended for the preservation of forests, recreational areas, parks and greenways, limited agricultural uses and very, very low density single family residential uses. Its purposes

are to permit limited single family residential development on very large lots, to discourage the development of residential subdivisions and nonresidential uses, to protect environmentally sensitive areas, such as floodplain and steep slopes and to maintain the character of the surrounding neighborhood. Development in the FR District is hindered by extreme topography, poor access and the availability of few or no public services. Therefore, the number of uses permitted in the FR District is limited. Some uses are conditionally permitted. The conditions placed on these uses are to insure their compatibility with the low-density residential and public open space uses.

- Surrounding properties are zoned Forest Reserve (FR);
- Conclusion: The character of the property included in the variance would not be altered in a manner that substantially departs from the characteristics sought to be achieved and maintained within the relevant zoning district;

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

**Findings:**

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

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

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

**Findings:**

- See Findings under Section A;
- The proposed garage would meet all other applicable requirements;
- The petitioner states that the garage is located to minimize it's disturbance of the 12% slope;
- Conclusion: The specific purposes of the design standard sought to be varied would be satisfied;

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

**Findings:**

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

## DRAFT

### Findings:

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

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

### Findings:

- Staff finds there is “practical difficulty” in the use of the property. The configuration of the lot, existing house, septic system and existing slopes create a hardship for the petitioner resulting in no other suitable place to locate the garage;
- Conclusion: Practical difficulties in the use of the property exist

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

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

### QUESTIONS FOR STAFF – VAR-21-17 – Adams c/o Garvey

Kaczmarczyk: Any questions for staff? No. Is the petitioner here and would they like to speak?

### PETITIONER/PETITIONER’S REPRESENTATIVE – VAR-21-17 – Adams c/o Garvey

Garvey: Yes I am here. Can you hear me?

Kaczmarczyk: Yes. Would you like to speak?

Garvey: Yes. My name is Norbert Garvey.

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

Garvey: I do.

Kaczmarczyk: Thank you sir. Go ahead.

Garvey: In my letter that I wrote to the Board I have worked for this couple for the last 25 years and they are very responsible land owners. I think Rebecca kind of attest to that. They keep a very tidy place with no runoff conditions and the downslope area is heavily wooded all way to the lake. One of them is over 80. I thought he was a little under 80 but holds his age well and he is over 80



## **DRAFT**

and his wife is nearing 80. So, they are basically oxygenarians and they want to age in place at their well-loved home. They have no offspring. They lost their only son. They have an RV that can be used for their elder care and for travel conditions for their needs and then they also want to have a place for people to park. I think Rebecca didn't state that the drive coming in is a single lane, so there is no curbside parking available. The RV won't fit in their other garage. We have to build a little bit taller garage door to get them in so they are building something that matches the architectural style of their existing house and I really don't feel like it is going to interfere with anyone else's house and the neighbors there have all been neighbors for 2 decades, minimum. Other than that, that is about all that I have to say. You can see by the pictures that it is well maintained and very well taken care of.

Kaczmarczyk: Anybody have any questions for Mr. Garvey?

Wilson: I have a question of clarification. You said that the RV is used for elder care?

Garvey: Yes because of travel difficulties at their age. During the pandemic times of course they were nervous about they have no offspring here, they lost their child, they do have a niece and nephew in Louisville and occasionally they travel, they don't like to stop and use the bathroom anywhere so they have decided that is the safest way for them to be able to travel to and from any location to visit family or to and from any medical needs that they would have and it can also be conditioned and they begin to fail if they need for any handicap purpose. They are oxygenarians and they are just making a long-term survival plan to stay on the property. We are not adding bedrooms or bathrooms. They just want to be able to keep an elder care providers car out of the way.

Wilson: But the elder care provider would not be living in the RV?

Garvey: No, that is not required.

Wilson: Ok, thank you.

Kaczmarczyk: That was a good clarification, Larry. Any other questions for Mr. Garvey? None. Is there anyone else here that wishes to speak on behalf of this petition? Seeing none. Is there anyone here that would like to speak against this petition? Seeing none. Is there a motion?

Sorensen: I can make a motion.

Kaczmarczyk: Go ahead Vicky.

**SUPPORTERS – 2 VAR-21-17 – Adams c/o Garvey: None**

**FURTHER SUPPORTERS – VAR-21-17 – Adams c/o Garvey: None**

**REMONSTRATORS - VAR-21-17 – Adams c/o Garvey: None**

**ADDITIONAL QUESTIONS FOR STAFF – VAR-21-17 – Adams c/o Garvey: None**

**DRAFT**

**FURTHER QUESTIONS FOR STAFF – VAR-21-17 – Adams c/o Garvey**

Sorensen: **In case number VAR-21-17, design standards variance Chapter 825-4 (C) 1, at 5337 East Prince Road Heltonville, Indiana, I move to approve the design standards variance to Chapter 825-4 (C) 1, based on the findings of fact.**

Guerrettaz: I **second** that.

Kaczmarczyk: Call the roll please Larry.

Wilson: The vote is on Variance 21-17, Patrick and Ilene Adams variance request from development standards for ECO Area 1 under Chapter 825 in regard to 12 percent slope. Again, a yes vote is to approve the design standards variance based upon the findings of fact, with the specific finding that staff findings practical difficulty in the use of property. Again, a yes vote is a vote to approve the variance. Bernie Guerrettaz?

Guerrettaz: Yes.

Wilson: Mary Beth Kaczmarczyk?

Kaczmarczyk: Yes.

Wilson: Vicky Sorensen?

Sorensen: Yes.

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

**The motion in case VAR-21-17, Patrick and Ilene Adams c/o Norbert Garvey Eco Area 1 (12% Slope) Variance to Chapter 825, in favor of approving the variance, carried unanimously (3-0).**

**DRAFT**

**NEW BUSINESS**

**6. VAR-21-18**

**Elliott Minimum Lot Size Variance to Chapter 804**

One (1) 0.25 +/- acre parcel in Perry Township, Section 26 at  
5785 S Handy RD. **Zoned SR.** Contact: [acrecelius@co.monroe.in.us](mailto:acrecelius@co.monroe.in.us)

**BOARD ACTION:** Kaczmarczyk introduced the petition.

**STAFF ACTION:** Petition was withdrawn by staff.

**DRAFT**

**NEW BUSINESS**

**7. CDU-21-1**

**Hopwood Conditional Use to Chapter 813 for Agricultural Event Center, Small.**

One (1) 114.31 +/- acre parcel in Clear Creek Township, Sections 07 and 08 at 620 W Chumley RD. **Zoned AG/RR.**

Contact: [rpayne@co.monroe.in.us](mailto:rpayne@co.monroe.in.us)

**BOARD ACTION:** Kaczmarczyk introduced the petition.

**STAFF ACTION:** Petition was continued by petitioner.

**DRAFT**

**NEW BUSINESS**

**8. VAR-21-19**

**Weber Side Yard Setback Variance to Chapter 833**

One (1) 0.64 +/- acre parcel in Bloomington Township, Section 36 at 4585 E State Road 45. **Zoned RE2.5.** Contact: [tbehrman@co.monroe.in.us](mailto:tbehrman@co.monroe.in.us)

**BOARD ACTION:** Kaczmarczyk introduced the petition.

**STAFF ACTION:**

Behrman: I am just trying to figure out how do you make this full screen view?

Nester Jelen: Press present in the upper right hand corner.

Behrman: Sorry, Jackie.

Nester Jelen: Thanks ok. Press escape and press present in the upper right hand corner. There you go, right there.

Behrman: Thank you. Alright, so this is VAR-21-19, Weber Side Yard Setback Variance to Chapter 833. This is a 0.64 acre lot in Bloomington Township, Section 36, located at 4585 East State Road 45, just outside of the City of Bloomington limits. Their home currently encroaches 20' into a 30' setback, so it is 10' feet off of the property line and they are wanting to do an addition that won't encroach any further. It is zoned RE2.5. It is also in the Environmental Constraints Overlay Area 3. I am not sure if that is Griffy. I think that is Griffy. It could be Lake Monroe. The top of the watershed there and then the Comprehensive Plan has it as MCUA Rural Transition. This are the site conditions. So it is a very narrow lot and there is an existing house here already and it is pretty flat. This is the house as seen when driving east and there is some vegetation in between these 2 driveways that screen it to some degree. The addition would be located behind the house, kind of behind the vegetation. This is the driveway, so facing north and again, the addition would be back behind the existing home. This is the eastern property line and the addition would go where these shrubs are and this is an overview of the site. I will note that there is a very heavily wooded lot beside them and so there is really not visibility here, you would not see it. This is the bufferyard here in the summer time which is going to make it difficult to see any addition that is put on the site here. This is the petitioners site plan on the left and this is the existing home here showing really it is almost entirely in a side setback. For this RE2.5 zone it is a 30' setback for both side. The lot really only has a 12' span that is considered buildable. This home was built, oh, I don't have it in here, I think it was built in 1930. It does register as notable on the IHSSI County Survey for a Historic Structures. As a curtesy I took this to the Historic Preservation Board this month and let them review this petition request. They frankly had no issues with it. There is no Building Permit submitted yet so I don't have the architectural design but because there is such a nice vegetative buffer and the addition is going to be behind the home they feel like it is not going to impact the visuals of this property. It is not locally designated currently but I did give the opportunity to request any special conditions if needed and they chose not to. So, I think they have confidence in the architect to make this kind of seamless addition to this historic structure. Staff recommends approval for the Side Yard Setback Variance, based on the finding of fact.

### RECOMMENDED MOTION

Staff recommends **Approval** for the side yard setback design standards variances based on the findings of fact.

### FINDINGS OF FACT: Side Setback Chapter 833

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

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

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

#### Findings:

##### Primary:

- The improvements to the existing historic house will be in the rear of the existing home;
- There is a fully vegetated buffering along the east property line and a partial buffering from the west;
- The property is not locally protected under the Historic Preservation Overlay;
- There are no designated scenic areas nearby;
- The petitioner has hired a professional architect to design the

##### 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 house was restored in 2011 and a new septic system was installed (permit #19710) in the northern part of the property.
- The two septic tanks are clearly shown on the site plan and easily seen on the property;
- The site maintains frontage on E State Road 45, a major collector;
- The residence meets the front setback requirements of 65' from the centerline of the road;

##### 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) & (2);
- The property is zoned Estate Residential 2.5 (RE2.5);
- The RE2.5 zone requires a 30' setback for structures plus 4' for each additional story;
- The home and the proposed addition are only one story tall;
- The home encroaches 20' into the side setback;
- The proposed addition will encroach 20' into the side setback but no farther than the existing home;
- The lot is 66' wide and there is only a 12' strip of land that would meet the RE2.5 setback standard;
- Staff estimates six other properties in a half mile of the petition site with similar zoning that also have narrow lots with setback issues;

**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 10' side yard setback would be allowed for the existing structure and proposed addition;
- Sufficient setback would remain after the variance to allow maintenance on the structure;

**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:**

- See Findings B(1);
- There are vegetated buffer yards along the property lines;
- Drainage it to the south towards the road;
- There are not visible karst features or regulated floodplain on the site;

**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:**

- The narrow width of this lot combined with the assigned zoning leaves only a 12' strip of land that meets buildable area for this lot;
- Granting the side setback variance would bring the existing residence built in 1925 into compliance with setback requirements for the RE2.5 zone;
- There are practical difficulties deemed appropriate to grant this side yard setback 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.



**DRAFT**

**QUESTIONS FOR STAFF – VAR-21-19 - Weber**

Kaczmarczyk: Any questions for staff? No. Is the petitioner here and would they like to speak?

**PETITIONER/PETITIONER'S REPRESENTATIVE – VAR-21-19 – Weber**

Rosenbarger: Yes, I am here. Can you hear me?

Kaczmarczyk: Yes, I can. State your name.

Rosenbarger: James Rosenbarger. I am an architect.

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

Rosenbarger: I do.

Kaczmarczyk: Alright, thank you sir.

Rosenbarger: Thank you. I think it has been covered pretty well by Ms. Behrman. This is a couple that plans to make this their home. They have been staying here on weekend and that sort of thing but are now planning to move to Bloomington. You can see the lot is quite narrow. The buildable area outlined in yellow is pretty tight and we are not trying to encroach anymore into the side yard then the existing house already does. Thanks.

Kaczmarczyk: Any questions for Mr. Rosenbarger? No questions. Is there anyone else here that would like to speak on behalf of this petition? Anyone that would like to speak against this petition? Seeing none. Do you have a motion for me?

**SUPPORTERS – VAR-21-19 – Weber: None**

**FURTHER SUPPORTERS – VAR-21-19 – Weber: None**

**REMONSTRATORS - VAR-21-19 – Weber: None**

**ADDITIONAL QUESTIONS FOR STAFF – VAR-21-19 – Weber: None**

**FURTHER QUESTIONS FOR STAFF – VAR-21-19 – Weber**

Guerrettaz: Vicky?

Sorensen: I can do that. **In case number VAR-21-19, Design Standards Variance Chapter 833 Side Yard Setback Requirements at 4585 East State Road 45, I move to approve the Side Yard Setback Design Standards Variance, based on findings of fact.**

Guerrettaz: **Second.**

**DRAFT**

Kaczmarczyk: Please call the roll, Larry.

Wilson: The vote is VAR-21-19, Weber Side Yard Setback Variance to Chapter 833. A vote in favor is a vote to approve the variance, based upon the findings of fact from the side yard setback. Mary Beth Kaczmarczyk?

Kaczmarczyk: Yes.

Wilson: Vicky Sorensen?

Sorensen: Yes.

Wilson: Bernie Guerrettaz?

Guerrettaz: Yes.

Wilson: Variance is approved by a 3 to 0 vote.

**The motion in case VAR-21-19, Weber Side Yard Setback Variance to Chapter 833, in favor of approving the variance, carried unanimously (3-0).**

## DRAFT

### NEW BUSINESS

#### 9. VAR-21-20

**Eason Minimum Lot Size Variance to Chapter 804**

**Eason Front Yard Setback Variance to Chapter 804**

**Eason Buildable Area Variance to Chapter 804**

One (1) 0.83 +/- acre parcel in Benton North Township, Section 35  
at 9155 E Southshore DR.

**Zoned SR.** Contact: [acrecelius@co.monroe.in.us](mailto:acrecelius@co.monroe.in.us)

**BOARD ACTION:** Kaczmarczyk introduced the petition.

#### **STAFF ACTION:**

Crecelius: Thank you Mary Beth. This variance request encompasses 3 different requests from Chapter 804. They are for a Minimum Lot Size Variance, a Front Yard Setback Variance and a Buildable Area Variance. This property is located at 8155 East Southshore Drive in Section 35 of Benton North Township. Because there are 3 variance and they are kind of stacked - they all have a little bit of a nuance so I am going to talk about the specific requests for each variance here and then I will come back again and talk about the 3 different variances and what it would take for approval/denial that kind of thing because some of them are hooked together. The first variance is the Front Yard Setback. The petitioner is requesting a proposed 10' setback out of a front yard setback that is 25'. This property is located in between East Southshore Drive on the south side and Lake Lemon to the north. The property was determined as being a through lot, which I do have the definition here on the page, which is a lot having frontage on 2 parallel or approximately parallel streets, a front yard on each abutting street, watercourse or lake. So, in this scenario it would have a front yard from Southshore Drive and a front yard from Lake Lemon. The second variance request is Buildable Area. The petitioner is proposing construction within FEMA Floodplain. As a note, which this is something I did not quite realize but I went ahead and was clarified by the Floodplain Administrator earlier today, is that although the site plan shows FEMA flood zone, which I have outlined in a light blue in the site plan on the right, that is really just the FEMA outline, it is basically for insurance, what we look at in the county is a contour line, which is 635.1. It is not exactly that shape when it comes to floodplain and administering a possible Floodplain Development Permit. Just as a note 635.1 is marked you can see it just on the left of that light blue line on the site plan. The third variance is the Minimum Lot Size. The property is zoned Suburban Residential and it requires a 1 acre minimum lot size. There is a condition within Chapter 804 that says if you meet all other standards it is ok to have a lot size that is under 1 acre. Because the petitioner is proposing the 2 other variance requests that are other design standards the minimum lot size is required. The petitioner is proposing a 5,800 square foot home of livable space with approximately 4,100 square foot attached garage. Why they are requesting the variance is that they are proposing to have a an in-ground pool with a two-tier deck that they are proposing to be located within that setback and also within the FEMA Floodplain or the 635 contour line. So, I already went over this a little bit. It is located in Benton North Township. It is currently zoned Suburban Residential and the Comprehensive Plan identifies this area as Rural Residential. This is a staff generated map on the left, which is not as detailed with the contours as the petitioners site plan, dog in the way, sorry, and it does show an approximation of the FEMA Floodplain. On the right there is a parcel size map that we sometimes make if it is relevant for a minimum lot size variance. In this area a lot of the homes, the homes on the south side of East Southshore Drive are mainly, there are some Suburban Residential, there are also Forest Reserve, which has a larger lot

size. On the north side of East Southshore Drive is almost all Suburban Residential. As you can see there is a lot of parcels shown here that are under 1 acre. I did a really quick search in the petition review data base and saw that in the past we have seen 13 different variances for minimum lot size and design standard setbacks along and that is only 4 addresses, along East Southshore Drive. So, if you have been on the BZA for a while you know we see them pretty regularly for our lot size in this area, so it is not unusual that there is a subpar lot size along Lake Lemon. This was Exhibit 3. The petitioner provided this illustration of the floodplain and I just thought it was a good illustration of what they are doing. They do have overhead powerline. The property did contain a single family residence that was demolished last year. The lake is owned by the Lake Lemon Conservancy so it doesn't follow the shoreline exactly and it includes kind of a varying distance of that shoreline, so there is a chunk that you can see up here that is owned by Lake Lemon Conservancy along with the other parcels that encompass the lake. What we are looking at is these 2 parcels and these 2 addresses right here. Before the petitioner bought it they were 2 separate lots and they do have 2 separate addresses. The petitioner has taken steps to combine the 2 properties for planning and zoning purposes. We did notice a little late that the combination just due to a technicality, it didn't include the language that is required for combining for planning and zoning purposes. The petitioner is wanting to have it as one lot. They designed a home for a single lot so they will be moving forward with fixing that error. To go over the variances again, to approve either the Front Yard Setback or the Buildable Area the Minimum Lot Size variance has to be approved. If the Front Yard or the Buildable are not approved the Minimum Lot Size is basically null because there is not design standard being requested so they fit under that condition again. So, just have that in the back of your mind, A or B has to include C. The Front Yard Setback if approved they could have the 10' setback for where they are proposing. Approving this would not allow them to build past the 635 contour line. If the Buildable Area variance is approved they would be able to build within FEMA Floodplain but that again is contingent upon also the Front Yard Setback because as you can see both of these lines are basically right next to each other, so Front Yard and Buildable have to go together. You could do the Front Yard Setback if the petitioner wanted to discuss relocating the pool out of floodplain then you could maybe do a Front Yard Setback and a Minimum Lot Size, just make sure that there is a little consideration as to if one gets approved making sure the other one is approved as well. The Buildable Area variance if that is approved it would allow the petitioner to apply for a Floodplain Development Permit, so assuming they made all of those standards and they go through the process they would be able to build in accordance without permit but it is a permit process so it is not an outright given. It just gives them the ability to do that. I think I covered everything here. Staff is recommending denial for all 3 variances, mainly because these variances are not required in order to develop the petition site with a single family residence. The petitioner has proposed a site plan that has a single family residence that does not need any of these variances. It would only be required to have an inground pool and deck in the specific locations that they proposed. The site, I don't necessarily want to say constrained, the site does have an overhead powerline in the front of the property but it is really not too much of a constraint because we can already see that there is a fairly large residence that has plenty of room along with a pretty large 5 bedroom septic system, so although there is a good bit of area here in the front that is not buildable they have already shown that they can do quite a bit within the setbacks. The variances are being recommended denial just because there is no practical difficulty and we are unable to find evidence that would support the 3 findings of fact needed to recommend approval. Does anybody have any questions?

**RECOMMENDED MOTION:**

## DRAFT

**Deny** design standard variance (A) from the **Front Yard Setback** requirement of Chapter 804 of the Monroe County Zoning Ordinance based on the findings of fact, specifically finding (C).

**Deny** design standard variance (B) from the **Buildable Area** requirement of Chapter 804 of the Monroe County Zoning Ordinance based on the findings of fact, specifically finding (C).

**Deny** design standard variance (C) from the **Minimum Lot Size** requirement of Chapter 804 of the Monroe County Zoning Ordinance based on the findings of fact, specifically finding (C).

Conclusion: These variances are not required in order to develop the petition site with a Single Family Residence.

**Note:** The petitioner attempted to combine the deeds for Planning and Zoning purposed in 2020. The deed submitted doesn't meet the requirements for a combined deed. The petitioner will need to submit a combined deed with the Building Permit in order to move forward with construction plans designed for a single lot. The language for a combined deed can be found in Chapter 804, or Exhibit 4.

### **FINDINGS OF FACT: Front 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 0.86 +/- acres and is zoned Suburban Residential (SR);
  - The petition site is a Through Lot per Chapter 804;
  - The SR zone requires a 25' Front Yard setback;
  - The site is undeveloped;
  - The petition contains FEMA floodplain due to proximity to Lake Lemon;
  - The petitioners are proposing a 15' encroachment into the Front Yard setback and FEMA Floodplain;
  - If this variance is approved it would allow the petitioners to encroach into the 25' Front Yard setback by 15' (per Exhibit 2);
  - Variance approval is contingent upon the approval of variance (C) Minimum Lot Size;
  - If approved, it would not allow the petitioner's to build within the Floodplain;
  - In order to approve the encroachment as proposed in Exhibit 2, all variances must be approved;
  - **Conclusion:** The approval 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 site is accessed off of E Southshore DR, a Local road;
- The site has access to water and septic;
- The petition site is limited due to Overhead Utility lines at the southern property boundary;
- **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 character of the surrounding properties consists of single family 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 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 Front 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);
- The effects of building within the Floodplain are unable to be determined by staff;
- **Conclusion:** Staff is unable to determine if the variance would 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:**

- 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:**

- See findings under A(1);
- The petition site is limited by having two frontages, FEMA Floodplain, and a large area dedicated to an Overhead Utility at the southern property boundary;
- If denied, the petition site is able to be developed with a Single Family Residence;
- **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.

**FINDINGS OF FACT: Buildable Area Requirement**

**DRAFT**

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 0.86 +/- acres and is zoned Suburban Residential (SR);
- The petition site is a Through Lot per Chapter 804;
- The SR zone requires a 25' Front Yard setback;
- The site is undeveloped;
- The petition contains FEMA floodplain due to proximity to Lake Lemon;
- The petitioners are proposing construction located within the FEMA Floodplain;
- FEMA Floodplain is unbuildable per Chapter 804;
- If this variance is approved it would allow the petitioners to apply for a Floodplain Development Permit (issued by the County Floodplain Administrator, Tammy Behrman);
- Upon permit approval the petitioners could build within the FEMA Floodplain;
- Approval of this variance is contingent upon the approval of variances (A) Front Yard Setback and (C) Minimum Lot Size;
- In order to approve the encroachment as proposed in Exhibit 2, all variances must be approved;
- **Conclusion:** The approval would 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 is accessed off of E Southshore DR, a Local road;
- The site has access to water and septic;
- The petition site is limited towards the south due to Overhead Utility lines;
- **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:**



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- See Findings under Section A(1);
- The character of the surrounding properties consists of single family 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 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 Section A(1), A(2), A(3);
- The petitioner is applying for a Buildable Area variance;
- **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);
- The effects of building within the Floodplain are unable to be determined by staff;
- **Conclusion:** Staff is **unable to determine** if the variance would 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:

- 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:**

- The petition site is limited by having two frontages, FEMA Floodplain, and a large area dedicated to an Overhead Utility at the southern property boundary;
- If denied, the petition site is able to be developed with a Single Family Residence;
- The proposed construction could be relocated within an area that is buildable;
- 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.

**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 is 0.86 +/- acres and is zoned Suburban Residential (SR);
- The SR zone requires a Minimum Lot Size of 1 acre;
- The petition contains FEMA floodplain due to proximity to Lake Lemon;
- The petitioners are proposing a 15' encroachment into the Front Yard setback and building within un-buildable area (FEMA Floodplain);
- This variance is triggered by Chapter 804, Table 4-1 (F) states that: *If all other development standards are met, no variance is required for a lot of record with an area less than one (1) acre;*
- Approval of this variance is only required if either of the other two requested design standard variances are approved;

## DRAFT

- **Conclusion:** The approval 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 site is accessed off of E Southshore DR, a Local road;
- The site has access to water and 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 character of the surrounding properties consists of single family 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 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 Minimum Lot Size variance which is required due to the other two (2) design standard variance requests;
- **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);
- **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:**

- 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:**

- See findings under A(1);
- This variance is not required if the petitioner was not proposing to encroach into the Front Yard setback, and build within un-buildable area of the site;
- If denied, the petition site is able to be developed with a Single Family Residence;
- **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 – VAR-21-20 – Eason**

## DRAFT

Sorensen: I have a question.

Guerrettaz: Quick question.

Sorensen: Go on Bernie.

Guerrettaz: Go ahead Vicky.

Sorensen: Ok. I noticed that at different times you would say that, conclusion, staff is unable to determine if the variance would promote conditions on site such as standing water, ponding and then other times you would say; the conclusion would not promote conditions. What caused the difference that you saw according to where the land is?

Creceilius: Most likely it is probably the difference between 3 different sets of findings of fact, which I very well could have left an incorrect determination for a variance to be approved. It does have to find all 3 of the code for each variance request, which I know has not been done for the 3 but for each one I had to really try to consider each one specifically. So, each finding of fact, if I am talking about minimum lot size I am probably not going to talk about any detrimental environmental conditions because it doesn't really apply to minimum lot size. I very well could have just had an incorrect typo. Is there page number you would like me to refer and see if it is an error or if it is just based on?

Sorensen: I just noticed on page 139. It said on findings conclusion, it would not promote conditions on site or offsite and the same wording is the same as on 133 where you say you are unable to determine if the variance would promote it. So, I just didn't know if there was a difference in looking at the land.

Creceilius: Those are specifically for the Front Yard and the Buildable Area, especially the Buildable Area building within a floodplain, I created that specific wording because I can't necessarily say if a Buildable Area variance is approved, that the Floodplain Development Permit process would encompass the review that there wouldn't be environmental negative effects. So, I don't have the data to offer a recommendation because there is a whole another step for that Buildable Area variance. Does that answer your question Vicky?

Sorensen: Sure, it kind of clears it up on what you are looking at and how you are determining it. Thank you.

Kaczmarczyk: Bernie.

Guerrettaz: The variance for the buildable area as it relates to the 635 elevation, where does the 635 come from again? That is not the fee line of Lake Lemon is it?

Creceilius: Yes it is the fee take line.

Guerrettaz: Ok the fee line from Lake Lemon and that is ...

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Wilson: Actually Bernie the 635 is the elevation of the 100 year floodplain that has been determined by DNR.

Guerrettaz: Ok, and that was my question because I thought that Anne said that wasn't the regulated floodplain elevation, so I wanted to clarify that. So, that is the regulated floodplain elevation based on the DNR.

Wilson: My understanding is we have always used 635 with DNR for determining what the actual level that is out of the floodplain above 635.

Guerrettaz: Ok.

Creclius: I would defer any specific floodplain questions to Tammy Behrman because she has been going through a lot of training with it recently and I think she has got a really clear understanding of it. It is something that I am not necessarily clear on so I would definitely refer to her.

Guerrettaz: Ok, Tammy, the thumb is on you now. Go for it.

Behrman: Alright, so in order to start a process you have to file with the DNR a FARA, Floodplain Analysis and Regulatory Assessment, that is the FARA. The FARA then gives you a base flood elevation. Base flood elevation for Lake Lemon is 635.1' at elevation level. Under our Chapter 808 Ordinance, our Floodplain regulation, which we adopt from state language, it is required by us and administered and you have to be meeting DNR's expectations, we are administering DNR's best available floodplain layer for permit processes. So we will be using that 635.1 to issue any permits and to delineate the floodplain even though the FEMA map is shown to be a little bit different. The FEMA map is actually only applicable really to bank lenders who need a federally backed mortgage to be insured. We don't use that for any regulation purposes anymore. I am going to turn off my mic because of the train.

Kaczmarczyk: I miss the courthouse bells ringing and chiming the hours.

Guerrettaz: Ok, so let me jump over to us other question. Thanks for that Tammy. I just wanted to make sure that there wasn't some other, I thought we were following the DNR, I just wanted to make sure I did gather that.

Behrman: Just to clarify, that is just base flood elevation. If you need to get to the regulatory elevation level then you are adding 2' per the states regulation, so any first floor are elevation level 637.1 basically, just to clarify from a structural standpoint that we will be looking at.

Guerrettaz: I have a quick question about A and B. So, if a variance was granted for A and B, Anne did you say that C would ultimately be necessary also or I would think if A and B were approved that C would be necessary because then the variance we are proposing, C wouldn't be required because the other 2 have been met? Does that make sense?

## DRAFT

Creceilius: Yes so the way that it is written within Chapter 804 it basically says if all other design standards are met within the SR zone a Minimum Lot Size Variance is not required.

Guerrettaz: Right so if A and B were met with a variance is C necessary? You are saying yes.

Creceilius: It would be.

Guerrettaz: Ok.

Creceilius: If A and B are approved C is necessary. If no design standard variances are approved the C is essentially null.

Guerrettaz: Ok. Just a couple of comments before the petitioner. A couple of advantages I see with this is, well 3 things; its seems fairly consistent with some of the properties around the lake, which isn't a heavy criteria for me but it is an observation; two; reducing and combining the 2 zoning lots I see as an overall benefit if we are wanting to limit the number of homes and disturbance around the lake and septic I think that is a benefit. I also like the septic field being up near Southshore Drive instead on the back side of the home. I see those as some benefits with this site plan that seem to be a positive if you look at the entire area. That is all that I have got right now Mary Beth.

Wilson: One concern that I want to raise to follow up on Bernie and I probably wouldn't even know this except that yesterday looking at Duke Energy Utility Easements and their guidelines restrictions on what you can do in utilities easements and there is a prohibition if its Duke there may be a prohibition against putting a septic system underneath a utility line because they can't get trucks in to work on the utility lines if they have to. I would say that if a variance is granted that if be conditioned upon approval by whoever the utility is in regard to putting septic tank under those lines because it contradicts what a utility easement is for which is to allow the utility to get in an replace lines, take trucks in, do everything they have to do within that easement.

Nester Jelen: Larry, did you want me to share the document on practical difficulties?

Wilson: I would like to go over that because whenever we make a negative recommendation on these type of minimum lot questions it is based on practical difficulties, whether or not the petition shows there are practical difficulties in doing what they want to do. This what our ordinance says and we don't review this very often and I wanted to bring it up just to see why we make recommendations against approving the variance. These are the standards. It is basically based on conditions of the property. Is there a sinkhole on the site? Are there utility lines? Is that a unique condition to this lot as opposed to every other lot in the area? Steep slopes in Monroe County for example, is not necessarily a unique condition to a lot. Secondly, can you use the property in the same extent enjoyed by other conforming properties in the area? If you look at the other housing, this is a 10,000 square foot footprint and that is probably 3 times what the average footprint is in this area. It cannot be reasonably addressed through redesign of the structure and if you move these all forward a little bit they would fit in. There is adequate footprint to even put 10,000 square foot building on this lot if you just move it a little bit forward. The last one is excessive cost, which I don't feel comes into the situation. These are what we set forth as defining what practical

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difficulties are and the way staff looks at these cases are it is not necessarily can you build a house on this site? It is not necessary the house of your dreams. We look at what other houses are in the neighborhood, what the square footage is, and so on. In this case you have go a 5,000 square foot of just garage area. I think that was our basis for a negative recommendation.

Kaczmarczyk: Thank you.

Creceilius: One note. As Larry was just talking about the ability to move forward, it does appear that there could be, obviously I am not an architect or construction manager but it does appear there is some room for redesign where maybe a front yard variance could be considers. It just seems like there would be some wiggle room in redesign as well.

Guerrettaz: That was another question I had Anne. You mentioned that earlier. Have the petitioners shared an alternate layout with staff or are they just confident that they can seep the house and the improvements if this design doesn't work?

Creceilius: That would be a great question for them when the time comes. I am not sure of their alternative ideas. Again, the house fits whether or not they will, if they are going to attempt redesigning the deck and pool, we have not seen any kind of alternative plan. We have encouraged them. They have worked a long and hard time on this property in getting a home designed. We had discussions for quite some time and knew they were going to try to request their ideal layout. Good question for the petitioners.

Guerrettaz: So, you mentioned that earlier that there was alternative designs but you have not seen that says that they can do that.

Creceilius: Correct.

Guerrettaz: Ok, thank you. Thank is all that I have got Mary Beth.

Kaczmarczyk: Ok, is the petitioner here and would they like to speak?

### **PETITIONER/PETITIONER'S REPRESENTATIVE – VAR-21-20 – Eason**

Eason: Yes, we are here. This is Chris and Tina Eason, if you want to swear us both in.

Kaczmarczyk: State your name.

T. Eason: Tina Eason.

C. Eason: Chris Eason.

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

T. Eason: I swear.



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C. Eason: I swear.

Kaczmarczyk: Alright, thank you.

C. Eason: I can start if you want about Larry's question about the power lines. I have already dealt with Howard McCormick, who is with South Central REMC and he was ok with the way the septic field sat as long as they can access the powerlines, which they can access the powerlines off the driveway and drive in the grass or whatever they can drive right along the powerlines. The septic field is not in the powerlines. But it is South Central REMC.

T. Eason: Not Duke.

Wilson: I didn't say it was Duke, I just said that it is an issue for all utilities with powerlines.

C. Eason: Yes, sir. We do a lot of utility work but I have talked to Howard with South Central REMC and they are fine.

T. Eason: A couple things, I thought maybe first we would just address some of the things that you guys were discussing and then I had some other things that I wanted to bring up. I know the engineering firm that put together the site plan for me indicated that small area on 9155, could you bring, well, I guess you can see it there where the blue line is, is actually what he referred to as the "fringe" of the floodplain. Basically like a FEMA undetermined area. He called in the fringe and I can't get any more specific than that. He was just saying that is really on the outside edge and it is really not the floodplain it's the fringe. Does that help with the floodplain issue?

Behrman: I will make a correction there. It is zoned A which is Floodplain and is it DNR best available data 635.1, that is a regulated special flood hazard area. It is not a flood way, so it is not zoned AE, so you do not need to get a State Permit but you are required to get a local Floodplain Development Permit if you are developing anywhere in the 635.1 elevation contour.

T. Eason: Ok. Thank you Tammy. The pool that we are proposing to put a small corner of in the floodplain, we would be building 2 feet above the feet, so I wanted to make sure you guys realized that.

Wilson: The bottom of the pool would be 2' feet above the floodplain?

T. Eason: Yes. My understanding is it would have to be.

Behrman: We haven't seen any plans for these yet. We have seen no first floor elevations yet from any of the design submitted.

T. Eason: With the Building Permit?

C. Eason: No the pool.

T. Eason: Ok. Anyhow, on the other side there is an empty lot to the left of us I think that is 9149

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to the west of us and then on the other side of that lot is Macame's house and then there is a very large home that is probably on more than one lot and it is actually where I think at one point and time where the, what do you call it, where the marina was located at and I think it is actually bigger than what our house is going to be. There are other very large homes close to where we are building at. I just wanted to make it clear that this isn't out of the ordinary thing. One thing that I wanted to start with and I don't know if you guys read my letter or not but of our 258' of overall length, a 115' of that, almost half of our property is nonbuildable. We have a 25', I guess we have been deemed as a through lot, even though I don't know when this through lot language went into effect because my neighbor to the east Mr. Wadiski, which he is on here well, when he built his home he was not, he did not have to conform to 25' setback on lakeside as well as the 25' setback on roadside. He is just the standard 10' setback like everybody else is but now we are being told that we have to have a 25' setback on both sides because we have a through lot. Technically, we do not own the property that connects with the lake. We have about 65' of conservancy property between our property line and the lake, so technically we don't own the land to the lake. We abiding by all of the other rules, setbacks, the 5' setbacks on each side, there is a 25' setback from the road for the right of way as well as another 25' setback just as your standard setback. So, there is 50' right there coming from the roadside that is unbuildable. But it is kind of a nonissue because we have the powerlines that really come into play, which are further back than that 50' and we can't do anything on 15' of either side of the powerlines. You have to be 15' off of either side of the powerlines. We are also trying to not building anything within 10' of our septic tanks or our finger systems. We are trying to conform to not building 2' above the fee. We are not exceeding 35' of maximum height. We are trying to abide by the 40 percent of open space, which we are more, way more than 40 percent of open space. We have left green on our property. We have conformed to I feel like a very substantial set of building rules and regulations and we just want to build with the same setbacks as what our neighbor did. I don't understand why we are having to come back 25' off of the road as well as the lake. I don't know when that through lot language went into effect. Do you have anything else, Chris?

C. Eason: No.

T. Eason: Technically, in the definitions of what a through lot is, we don't technically meet it. It says in Table 4.1, it says the front yard setback is states as yard fronting on any street. A front yard is clearly defined as front the right of way. So, front yard is from the right of way, not from a body of water. So, I think there is some language in Chapter 801 that is not stated correctly because a through lot is stated is not a lot having frontage on parallell or approximate parallell streets. A through lot has a front yard on each abutting street watercourse or lake. But then whenever you go back up and read what a front yard is, it clearly states it's a front yard from the right of way line. Everybody in the Planning and Zoning Department keeps calling our lake side a front yard, well, it is not from a right of way and technically we don't own conservancy property.

C. Eason: There is almost 85 to 100' from our property line to the lake.

T. Eason: To the lake, yeah. We purposely were wanting to turn the pool in the direction we turned in an effort to try to get, we realized that the southern exposure is going to be coming from the back side of our house, front side, I guess, road side, road side and we were trying to get the pool away from the house a little bit more so it would be shaded be the height of the house with the

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southern exposure coming up from the roadside of the house. That was the intention of that. Is there any other questions that you have got? We do have a very, our septic field takes up a very large piece of the property, which is also you know another nonbuildable area.

Kaczmarczyk: Ok, does anybody have any questions for the petitioners?

Guerrettaz: I have got one. What you show on the roadside where the overhead utility is?

T. Eason: Can you go back to, Anne, could you go back the map I submitted with my notes on it? Could you put that back up? That one, yes. Thank you, Anne. Ok, what was your question?

Guerrettaz: Actually I needed to go back to the one we were just looking at. I am sorry. Pardon me.

T. Eason: You are good.

Guerrettaz: Paul shows the overhead utilities. Is that the actual easement or is that the actual powerline? Do you know where he has got OHU that stands for Overhead Utility?

T. Eason: That is just the actual powerlines.

C. Eason: That is the powerlines.

Guerrettaz: Do you know how wide that, I don't see the easement of the powerlines...

T. Eason: 15' on each side. We were just told that by REMC.

Guerrettaz: 15' off the wire.

T. Eason: Yes on each side.

Guerrettaz: Ok, I am just trying to get a feel for where 15' is for how much room there is really to move that house south.

T. Eason: We do want to stay off of our septic field.

C. Eason: There was only maybe between the perimeter drain and the garage, this don't show it that well but it was like maybe 8-10', there is not a lot to move the house south.

Guerrettaz: Ok, and Larry that question about the bottom of the pool elevation, that was a pretty nice pick up. I looked at, if you look at the assuming elevation of 650 at the road and if you just do the math coming up from the 635, it would be possible if you assume an 8' pool from the bottom of the pool to the top walk it would be possible to have that elevation at the bottom of the pool 2' above that floodplain at 637.1. I mean just math wise.

C. Eason: Yes, because the pool that faces the lake there is a 12' like swim deck that is only 12

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inches deep and it goes 12' back and then starts taking from there and I our information is going to about 6-7' different from the 635.

Guerrettaz: The south end of the pool is about 636, roughly, so it is only a foot difference but yeah, that would make a difference. Ok, I think that is all I have.

T. Eason: But we were asking ultimately for 15' into the 25', 15' encroachment into the 25'. I think Anne said 10'. We actually requested 15', to be the same as the Lester's, our neighbor's right beside us.

Guerrettaz: I am going to ask a question but I just don't like to micromanage what people have for their vision here but you have looked at rotating the pool 90 degrees. Have you done that?

T. Eason: Yes and this is an option but as I stated before the southern exposure is going to come from the road side. The southern sunlight and the height of the house, we have looked at with an architect. The height of the house is going to shade the pool for the better part of the day. We were trying to get the pool away from the house.

Guerrettaz: Ok, that is all that I have Mary Beth.

Kaczmarczyk: Ok, anything else for the petitioner?

Wilson: Can we just go back to the aerial photos that she submitted? Has anyone talked about the adjacent houses and explained what happened here? There is an option in the zoning ordinance if there is an existing neighborhood to go with the average of the 2 houses between my guess is when the new house we built in that middle lot, just her map would be fine.

Crecelius: Sorry, I was trying to find site photo for you, the aerial.

Wilson: We can go to her exhibit. That would work. Yeah, there we go. The way it works is this. When somebody is looking, again, the language is confusion but basically if a side of the lot faces a lake it has that lake side has the front same setback requirement as the front yard. There is an alternative front yard setback that says the average of the houses on either side, and my guess is when the house when in to the right of the blue area the inspector went out and said this would be your setback line because it was the average of the houses on either side. They had that option of doing that but the footprint would actually be reduced from what if you go to the house to the left the footprint would actually be reduced or the setback would actually be greater if you used the average of the 2 houses on the adjacent lots. But that is probably what happened. The house in the middle there is not necessarily out of compliance it is just probably using that alternative setback.

Guerrettaz: Basically what you are saying Larry is Mr. and Mrs. Eason's prior the structure that was on the property prior actually was able to adjust the setback based on what the existing conditions were of the houses on each side of the house Mrs. Eason was talking about.

Wilson: I think the house that is shown in small on the right probably pre-existed before the ordinance. The house to the right of that is basically was constructed after the ordinance and I think

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what happened was the inspector looked at it and they averaged between the 2 houses one either side to come up with whatever the setback would be for that rear yard. The idea is you really want a consistent front yard or on both sides along a neighborhood. You don't want some people building forward and some people building back, just to create a uniformed setback and the ordinance recognizes that by saying you can use that average.

T. Eason: So, Lester's here. This is the Lester's house in the grey. You are saying that when he got his building permit that they used and average.

Wilson: I don't know this for sure. We don't have records that disclose this. But it is possible that what happened was they looked at either side and averaged the two. Do you see what I am saying? To come up with what the setback was on that lakeside.

T. Eason: When did the through lot 25' from both sides ordinance go into place?

Wilson: We have had the ordinance since 1998.

T. Eason: Well, Lester just built in 2009. This house was built in 2009 or 2010. I think Lester is on here. I will let him speak.

Lester: Do you want me to speak now?

Kaczmarczyk: I can swear you in sir. Well, actually hold on just a minute. Does anybody have any further questions for the petitioner? No, ok.

Crecelius: I would like to ask Larry I just want to clarify, I am not sure if the point, we generally don't operate with well, if someone was allowed to do it before then we can do it. We generate specifically from the ordinance. Whether there was a mistake or a different planner, different zoning inspector interpreted something different, director interpreted something differently, I don't know if that is necessarily relevant. Larry am I misguided there?

Wilson: No. All I am saying is it may have not been a mistake. Because there is a provision that allows the averaging of the setback from the houses on either side. The ordinance allows that. That may have been what occurred. I don't know. He may have made a mistake.

Kaczmarczyk: Ok. No further questions for the petitioner. Is there anybody else here that would like to speak on behalf of this petition?

## **SUPPORTERS – VAR-21-20 – Eason**

Wadziniski: That would be I am Les Wadziniski.

Kaczmarczyk: Mr. Wadziniski, do you swear to tell the truth and nothing but the truth?

Wadziniski: I do.

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Kaczmarczyk: Ok, proceed.

Wadzinski: Ok, just 2 points here. Number one; as far as the proposed plan I have no problem with that. I don't see how it would impact my property in any manner. So, I certainly have no opposition to that. On the issue of the through lot, we go our permit issued in 2009 and actually I got a copy of that in right here I can hold it out to take a look at it and I don't recall any discuss at all about this special averaging thing or whatever. My recollection was, well, the lake is 100' away and you are adjoining property there is the Lake Lemon Conservancy District, not the lake and therefor your setback is 10' and I also have an email from Jason Eakin, who I believe was on your staff at the time and the person that I worked with. He just said flat out 10' back and then the Building Permit is signed by Jim Gertsbauer, who was the Building Commissioner at the time and so I am thinking if there was a mistake they would have picked up on it or it sounds like perhaps the actual ordinance hadn't changed since 1998 but maybe you guys are interpreting it different now. I don't know. Back then in 2009 it was no question about it, they said, yeah, 10' back and you are good to go, so I did not need any variances with our property.

Wilson: One question I have is, is your even with houses on either side?

Wadzinski: It was pretty much. The building to the west before they tore it down, we were pretty consistent with that one. The one to the east of me, that one is a little hard to say because it is offset. I do recall him telling me he had to get flood insurance, now that is an add-on as well. But it is close. Actually you can stand on my porch and kind of look down the line to the west and you can kind of see the houses all sort of lined up about the same.

Wilson: Ok, thank you.

Kaczmarczyk: Ok, anyone have any other questions? Thank you sir.

Wadzinski: Thank you.

Kaczmarczyk: This there anyone else here that wishes to speak on behalf of this petition?

Nester Jelen: I am not seeing anyone.

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

Nester Jelen: I don't see anyone.

Kaczmarczyk: Ok. Does anyone have a motion ready? Bernie? Motion for us?

Guerrettaz: Yes, let me formulate this here. Anne had a great point but I still look at the character and that is one of the reasons why we talked about averaging setbacks and seeing what the adjacent properties look like and while I think this is a tough one. I think that I am just compelled with that fact that we are actually combining 2 lots that are on Lake Monroe or pardon me Lake Lemon and creating one and the location of the septic with the respect to the lake I am just leaning toward approving this variance based on those elements. I think it is better for the overall character of the

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lake and I don't think that someone will look out there and see anything that is out of the ordinary when you look at the character of the improvements along the body.

**FURTHER SUPPORTERS – VAR-21-20 – Eason: None**

**REMONSTRATORS - VAR-21-20 – Eason: None**

**ADDITIONAL QUESTIONS FOR STAFF – VAR-21-20 – Eason: None**

**FURTHER QUESTIONS FOR STAFF – VAR-21-20 – Eason**

Guerrettaz: **In case in VAR-21-20, design standards variance (A) Front Yard Setback from Chapter 804, (B) Buildable Area from Chapter 804 and (C) Minimum Lot Size from Chapter 804, the address is 9155 and 9161 East Southshore Drive, I would recommend approval of the variances, based on the findings of fact, the staff report and fact that I think that overall we are improving the situation around Lake Lemon by those factors that I iterated earlier. I do want to make sure that because of that prior to any Occupancy Permit or even the Building Permit that the lot lines are combined. That may be a no brainer because the Building Permit wouldn't be approved but I just wanted to reiterate the importance of that. That is my motion.**

Wilson: Bernie, I just have a couple of questions. Basically, you want us to add a finding that practical difficulties do exist in using the lot that justifies the granting of all 3 variances?

Guerrettaz: Yes, I do, yes. Thank you.

Wilson: One question that I have is I would really like to see a condition of a letter from REMC stating that the septic tank location is ok and that is not being difficult that is to protect the easement in the future.

Guerrettaz: I would accept that as a friendly amendment.

Wilson: I can't amend or make a motion. That is just a suggestion.

Guerrettaz: I amending per what you said. No one has seconded it yet. So, I would also **add a condition that REMC or any utility that has rights over this area has been investigated that they do not have a problem with the plan and that they can safely and adequately access their infrastructure.**

Kaczmarczyk: I am sorry, Bernie, **what is the practical difficulty** on this one?

Guerrettaz: **I think that the overall placement of the illuminating the lot line between the 2 lots and I believe that it does fit with the character of the area and the expectations of that are reasonable and I think the placement of the septic being in the front of the house is the best location based on the health and character of Lake Lemon. That is it. That is what I got. So you can call for a vote and see where we are at.**

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Sorensen: I will **second**.

Kaczmarczyk: Are you seconding, Vicky?

Sorensen: Yes, I am.

Kaczmarczyk: Ok, you want to call the roll, Larry?

Wilson: I sure will. The vote is on VAR-21-20, Eason Minimum Lot Size Variance to Chapter 804, Eason Front Yard Setback Variance to Chapter 804 and Eason Buildable Area Variance to Chapter 804, for the property located at 9155 East Southshore Drive. A vote in favor is a vote to approve, based upon a finding of practical difficulty in utilizing the lot in regard to construction of a single family residence with an associated accessory storage structure and further subject to condition that evidence of consent from REMC that the septic tank location under the lines is acceptable pursuant to their underline easement be filed with the Planning Department for their permanent record. Again, a vote in favor is a vote to approve all 3 variances on a finding of practical difficulty with the condition in regard to the overhead utility line easement letter from the utility. Bernie Guerrettaz?

Guerrettaz: Yes.

Wilson: Mary Beth Kaczmarczyk?

Kaczmarczyk: Yes.

Wilson: Vicky Sorensen?

Sorensen: Yes.

Wilson: Margaret Clements?

Clements: I arrived late so I need to abstain.

Wilson: Ok, I will note your abstention and your arrival.

Clements: Thank you.

Wilson: The variance is approved by a 3 to 0 vote, all 3 variances are approved by a 3 to 0 vote.

**The motion in case VAR-21-20, Eason Minimum Lot Size Variance to Chapter 804, Eason Front Yard Setback Variance to Chapter 804, and Eason Buildable Area Variance to Chapter 804, in favor of approving the variances, with conditions and amended findings as set forth in the motion, carried unanimously (3-0).**



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**NEW BUSINESS**

**10. VAR-21-21**

**Shumaker Minimum Lot Size Variance to Chapter 804**

**Shumaker Minimum Lot Width Variance to Chapter 804**

One (1) 2.23 +/- acre parcel in Salt Creek Township, Section 34 at 7504 E Rush Ridge RD.

**Zoned FR / ECO Area 1.** Contact: [dmyers@co.monroe.in.us](mailto:dmyers@co.monroe.in.us)

**BOARD ACTION:** Kaczmarczyk introduced the petition.

**STAFF ACTION:**

Myers: Thank you. This is the Shumaker Minimum Lot Size Variance and Minimum Lot Width Variance both to Chapter 804. This property is located at 7504 East Rush Ridge Road. It is zoned Forest Reserve and contains 2.23 acres in Salt Creek Township, Section 34. A little bit of summary and background here on the next slide. The petitioner requests the 2 design standards variances from Chapter 804 from Minimum Lot Size and Minimum Lot Width with the intention to remodel and construct additions to the existing residence on the property. In addition to the interior remodeling and the additions that are proposed to the existing house, the petitioner is also proposing the construction of an inground pool as well of the expansion of the existing detached garage to accommodate a guest and pool house as well as the reconfiguration entry court and landscaping and terraces on the property. Currently the site contains a 3,625' residence and a 612' detached garage and a 112' green house. Here is a little summary of the variances required here and now we have the location map. Right along Lake Monroe here just south of the, I forget the name of the subdivision but it's outside of the adjacent subdivision that is to the north. It is the Windfree Estates Subdivision, I believe. I will have to double check. Here we have the zoning map as well as the Comprehensive Plan map. You can see that it is zoned Forest Reserve, which requires a 5 acre minimum lot size for properties that are outside of a subdivision as well as zoned Farm and Forest in the Comprehensive Plan. Here I have the slope map delineated. You will note that there is FEMA Floodplain on the property. However, according to DNR best available flood map data there is no DNR Floodplain on the property, so that means there is likely a need for flood insurance based on the FEMA map. But there is no permitting requirements from this department based on the DNR best available data that we have on elevate. Now, we will go through some site photographs. Here is the driveway cut off of East Rush Ridge Road. In the background there is the gate to the subdivision that this property is not a part of particularly. Now, we have photographs coming down the long driveway to the lake front property of the existing structure and the existing detached garage. There will be some changes to this area in the middle with the roundabout that is proposed in the site plans and construction plans. We will just keep going through this site photographs that show the different aspects of the property and kind of the layout of the land. An attached garage and the existing structure currently. You will see the detached garage structure in the bottom right photograph that will be expanded to accommodate a guesthouse and a pool house. Here we have a photograph of the existing single family residence that has the greenhouse attached to it and then this bottom right photograph is where the lakefront starts. This is the backyard for the property. You can see the terracing of the ground there as well as you can see the lake in the background. Some more photographs of the backyard. You can see the lakefront there as well as looking back at the property and then looking back at the property again just going around taking photographs to get an idea of the site and where the lake is and get an idea of how flat the land is. It is all in buildable area. It is in the ECO Area 1 but like I said it is all under the 12 percent

requirement and the 15 percent requirement for all of these design plans for this property. Now, I have here on the screen the petitioner's representative's letter to the Board of Zoning Appeals stating their intentions of what to do on the property and what their own analysis of lot width in each area they are planning on constructing new additions or adding expansions to the structures there that they are varying lot widths at those locations that all do not meet 200' lot width requirement for the FR zone. Some more exhibits here as we continue on through this slide show. This is the existing layout of the site. These are all included in the staff packet as well from your review. So, you will notice some details there. This here is the proposed site plan. You will note that in the top left hand corner there is that proposed expansion of the detached garage as well as the incorporation of an inground pool. In the future some details regarding the roundabout driveway as well as the proposed expansions in the bottom right photograph of the existing residence that will also see interior remodeling as well. Overall, Planning Staff recommends approval of both design standards variances to Chapter 804 that is the Minimum Lot Size and the Minimum Lot Width based on the findings of fact and subject to the Monroe County Highway and Drainage Engineer reports. I will now take any questions that you have about this particular petition.

### **RECOMMENDED MOTIONS**

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

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

### **FINDINGS OF FACT: Minimum Lot 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:**

- Approval of the variance would allow the petitioner to perform the proposed remodeling and construct the additions to the property as described in this report and the submitted site plan;
- The portions of the site where additions will be constructed are located in buildable area and under 12% slope;
- The site contains an existing single-family residence with an detached garage and an attached greenhouse;
- The petition site is located within FEMA floodplain;
- The petition site is located in Area 1 of the Environmental Constraints Overlay;
- The submitted site plan proposes the removal of several trees on the property;
- Conclusion: It **would not** impair the stability of a natural or scenic area.

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

**Findings:**

- E Rush Ridge RD is a local road maintained by the County Highway Department for only a portion, which does not reach up to the petition site;
- The site operates on a septic system that will not be interfered with by the proposed remodeling and additions based upon its estimated location per the submitted site plan;
- New electric utility lines to be installed will be buried;
- 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);
- The other parcels in the area that zoned FR and have under 5.0 acre lot sizes are all in platted subdivision;
- 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, addition, or significant renovation that expands the footprint of

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the existing structures on this lot requires a building permit would need a minimum lot size and lot width variance;

- A rezone to the Suburban Residential (SR) zone is feasible, which would permit outright the lot size of 2.23 acres and the lot widths that are measured under 200’;
- 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 east, north, and south (i.e. towards Lake Monroe);
- The proposed location of the renovation and additions will not interfere with existing septic system based upon its estimated location per the submitted site plan;
- There is 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 are practical difficulties in that the property owner cannot do any development to this pre-existing nonconforming lot of record without first receiving a lot size and lot width variance, or petitioning a rezone. The lot was likely in existence prior to the 1997 zoning ordinance and therefore was made nonconforming by the ordinance.

### FINDINGS OF FACT: Minimum Lot Width

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

**(A) The approval, including any conditions or commitments deemed appropriate, will not be**

injurious to the public health, safety, and general welfare of the community, because:

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

**Findings:**

- Approval of the variance would allow the petitioner to perform the proposed remodeling and construct the additions to the property as described in this report and the submitted site plan;
- The portions of the site where additions will be constructed are located in buildable area and under 12% slope;
- The site contains an existing single-family residence with an detached garage and an attached greenhouse;
- The petition site is located within FEMA floodplain;
- The petition site is located in Area 1 of the Environmental Constraints Overlay;
- The submitted site plan proposes the removal of several trees on the property;
- Grading and construction on the site could lead to increased erosion and soil runoff into Lake Monroe if not performed properly;
- Conclusion: It **could** impair the stability of a natural or scenic area.

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

**Findings:**

- E Rush Ridge RD is a local road maintained by the County Highway Department for only a portion, which does not reach up to the petition site;
- The site operates on a septic system that will not be interfered with by the proposed remodeling and additions based upon its estimated location per the submitted site plan;
- New electric utility lines to be installed will be buried;
- 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);
- The other parcels in the area that are zoned FR and do not meet the minimum 200' lot width are all in platted subdivisions;
- 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, addition, or significant renovation that expands the footprint of the existing structures on this lot requires a building permit would need a minimum lot size and lot width variance;
- A rezone to the Suburban Residential (SR) zone is feasible, which would permit outright the lot size of 2.23 acres and the lot widths that are measured under 200’;
- 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 east, north, and south (i.e. towards Lake Monroe);
- The proposed location of the renovation and additions will not interfere with existing septic system based upon its estimated location per the submitted site plan;
- There is FEMA floodplain on the site;
- There are no visible karst features on the site;
- Conclusion: It **would not** promote conditions detrimental to the use and enjoyment of other properties in the area.

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

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### Findings:

- The Board of Zoning Appeals may request the petitioner to address any other significant property use and value concerns raised during the hearing on the requested variance;
- (C) **The approval, including any conditions or commitments deemed appropriate, is the minimum variance necessary to eliminate practical difficulties in the use of the property, which would otherwise result from a strict application of the terms of the Zoning Ordinance.**

### Findings:

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

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 – VAR-21-21 – Shumaker

Kaczmarczyk: Any questions for Drew? Ok. Is the petitioner here and would they like to speak?

### PETITIONER/PETITIONER'S REPRESENTATIVE – VAR-21-21 – Shumaker

Shumaker: I am. My name is Gary Shumaker. I am the architect obtained by Chris and Cory Pickett.

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

Shumaker: I certainly do, yes.

Kaczmarczyk: Thank you, sir.

Shumaker: This is a beautiful site. We have taken great care to plan and organize this so that we can protect the woodland areas and magnificent views off of the site. If you have any questions for me, I am happy to answer those.

Kaczmarczyk: Does anybody have any questions? No. Is there anybody else here that would like to speak on behalf of this petition? Seeing none. Is there anyone here that would like to speak

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against this petition? Seeing none. Can we have a motion?

**SUPPORTERS – VAR-21-21 – Shumaker: None**

**FURTHER SUPPORTERS – VAR-21-21 – Shumaker: None**

**REMONSTRATORS - VAR-21-21 – Shumaker: None**

**ADDITIONAL QUESTIONS FOR STAFF – VAR-21-21 – Shumaker: None**

**FURTHER QUESTIONS FOR STAFF – VAR-21-21 – Shumaker**

Nester Jelen: You are on mute, Bernie.

Guerrettaz: Sorry I have to switch screens. Thank you Jackie. **In case number VAR-21-21, the request is a design standards variance for Minimum Lot size to Chapter 804 and Minimum Lot Width to Chapter 804, at 7504 East Rush Ridge Road, I move that we approve the design standards variances to Chapter 804 for Minimum Lot Size and Minimum Lot Width based on the findings of fact and subject to the Monroe County Highway and Drainage Engineer reports.**

Clements: I **second** that.

Kaczmarczyk: Please call the roll Larry.

Nester Jelen: Larry, you are on mute.

Wilson: I am sorry. The vote is on variance VAR-21-21, Shumaker Minimum Lot Size Variance to Chapter 804 and Shumaker Minimum Lot Width to Chapter 804 for the real estate located at 7504 East Rush Ridge Road. A vote in favor is a vote to approve both variances based upon the findings fact and subject to the Monroe Highway and Drainage Engineer reports. Again a yet vote is a vote approve both variances. Margaret Clements?

Clements: Before I vote yes I would just like to say that Mr. Seebert's daffodils were always spectacular on that property and I would like to vote yes on this.

Wilson: Vicky Sorensen?

Sorensen: Yes.

Wilson: Mary Beth Kaczmarczyk?

Kaczmarczyk: Yes.

Wilson: Bernie Guerrettaz?

Guerrettaz: Yes.



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

**The motion in case VAR-21-21, Shumaker Minimum Lot Size Variance to Chapter 804, and Shumaker Minimum Lot Width Variance to Chapter 804, in favor of approving the variances, carried unanimously (4-0).**

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**NEW BUSINESS**

**11. VAR-21-23**

**Perry Buildable Area (15% Slope) Variance to Chapter 804**

**Perry ECO Area 3 (18% Slope) Variance to Chapter 825**

One (1) 1.33 +/- acre parcel in Perry Township, Section 13 at  
Parcel no. 53-08-13-100-008.000-008.

**Zoned RE2.5 / ECO Area 3.** Contact: [dmyers@co.monroe.in.us](mailto:dmyers@co.monroe.in.us)

**BOARD ACTION:** Kaczmarczyk introduced the petition.

**STAFF ACTION:** Petition has been continued by the petitioner.

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**NEW BUSINESS**

**12. VAR-21-24**

**Wyss Side Yard Setback Variance to Chapter 804**

One (1) 0.5 +/- acre parcel in Benton North Township, Section 27 at  
3519 W Vernal PIKE.

**Zoned RS3.5.** Contact: [tberhman@co.monroe.in.us](mailto:tberhman@co.monroe.in.us)

**BOARD ACTION:** Kaczmarczyk introduced the petition.

**STAFF ACTION:** Petition has been continued by the staff.

**REPORTS:**

**Planning/Wilson:** I just have really quick update and that is that we are going to be switching to basically to working packet report form beginning at the May meeting. We are basically going to have a couple of pages to outline the variance request and then we will attach photos and the petitioner's documents to that. But we are no longer going to have where we have pages and pages of proposed findings for each variance. So, in effect we will not be making findings on variances. If somebody wants to appeal a variance, either a denial or remonstrator appealing approval at that point the findings of fact would be prepared with our attorney's involvement and the timings would be approved by the BZA, subsequent the approval. But I have been here 10 and half years and we have not 1 BZA case appealed so we are basically I think been doing overkill and this will save a ton of staff time and hopefully it will make meetings go a little bit more smoothly without having to wade through all of the reports.

Clements: That's just so you can get in a few more cases into that 200 page packet.

Wilson: We can't control the number of cases but we can control the number of pages.

Clements: Thank you for all of that hard work. It has been really good and I support that even though I would like to keep page number down too.

Kaczmarczyk: Anybody have anything else? No. Motion to adjourn the meeting perhaps?

Guerrettaz: Motion to adjourn.

Clements: Second.

**Legal/Schilling: No report.**

**The meeting adjourned at 8:15 P.M.**

Sign:

Attest:

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Mary Beth Kaczmarczyk, Chairman

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Larry J. Wilson, Secretary

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