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**BOARD OF ZONING APPEALS**  
**Virtual Meeting via ZOOM - Minutes**  
**August 4, 2021 - 5:30 p.m.**

**CALL TO ORDER**

**ROLL CALL**

**INTRODUCTION OF EVIDENCE**

**APPROVAL OF AGENDA**

**APPROVAL OF MINUTES**

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

**ROLL CALL:** Mary Beth Kaczmarczyk, Vicky Sorensen, Skip Daley, Bernie Guerrettaz

***ABSENT:** Margaret Clements*

**STAFF PRESENT:** Larry Wilson, Director, Jackie Nester Jelen, Assistant Director, Rebecca Payne, Planner/GIS Specialist, Tammy Behrman, Senior Planner, 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 February 3, 2021, carried with Skip Daley abstaining.**

**Motion to approve minutes from March 3, 2021, carried with Skip Daley abstaining.**

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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.  
Owner: RWP, LLC **Zoned ER.** Contact: [jnester@co.monroe.in.us](mailto:jnester@co.monroe.in.us)
- 2. VAR-21-24      Wyss Side Yard Setback Variance to Chapter 804**  
One (1) 0.5 +/- acre parcel in Benton North Township, Section 27 at  
8188 E Northshore DR.  
Owner: Wyss, Tom **Zoned SR.** Contact: [tberhman@co.monroe.in.us](mailto:tberhman@co.monroe.in.us)
- 3. VAR-21-42a      Kennington Karst & Sinkhole Development Standards Variance to Chapter 829**
- 4. VAR-21-42b      Kennington Buildable Area (15% Slope) Variance to Chapter 804**  
One (1) 0.39 +/- acre parcel in Van Buren Township, Section 13 at 3316  
W Jordan CT. Owner: Kennington, Corey D  
**Zoned RS3.5.** Contact: [rpayne@co.monroe.in.us](mailto:rpayne@co.monroe.in.us)
- NEW BUSINESS:**
- 1. VAR-21-35a      Redeemer Community Church Aisle Width Variance to Chapter 806**
- 2. VAR-21-35b      Redeemer Community Church Buffer Yard Variance to Ch. 830**
- 3. VAR-21-35c      Redeemer Community Church Landscaped Parking Island Variance to Ch. 830**
- 4. VAR-21-35d      Redeemer Community Church Maximum Building Coverage Variance to Chapter 833**  
Three (3) 0.86 +/- acre parcels in Bloomington Township, Section 31 at 111 S  
Kimble DR. Owner: Redeemer Community Church Of Bloomington Inc  
**Zoned RS3.5.** Contact: [rpayne@co.monroe.in.us](mailto:rpayne@co.monroe.in.us)  
\*\*\*CONTINUED BY STAFF\*\*\*
- 9. VAR-21-43      Habig Buildable Area (15% Slope) Variance to Chapter 804**  
One (1) 2.51 +/- acre parcel in Benton North Township, Section 28 at  
7467 N John Young RD. Owner: Habig, Barbara J  
**Zoned AG/RR.** Contact: [tberhman@co.monroe.in.us](mailto:tberhman@co.monroe.in.us)  
\*\*\*CONTINUED BY STAFF\*\*\*
- 10. VAR-21-47      Allen Minimum Lot Size Variance to Chapter 804**  
One (1) 0.5 +/- acre parcel in Clear Creek Township, Section 29 at 9385 S  
Harrodsburg RD. Owner: Allen, Larry Brig & Cathy Jean  
**Zoned ER.** Contact: [dmyers@co.monroe.in.us](mailto:dmyers@co.monroe.in.us)

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### OLD BUSINESS

#### 1. 1812-VAR-40      **Patzner General Contractor Use Variance to Chapter 802**

One (1) 0.68 +/- acre parcel in Perry Township,

Section 28 at 5605 S Old State Road 37.

Owner: RWP, LLC **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. This one is the Use Variance Patzner General Contractor for a parcel at 5605 South Old State Road 37. Just a quick history on this case, it was continued from last month but it has been continued a number of times in order to allow the petitioner to move off of the site completely. We have been reviewing their site for their new location which is actually across the street in this yellow square. The property that we talking about tonight is in the red triangle 5601 South Old State Road 37. Since last month there has been some progress made on this and I will go ahead and provide you will with updates. But the request tonight is for a Use Variance that would allow for a General Contractor Use in the Estate Residential zone. The petitioner built an accessory structure and is running a business, Riverway Plumbing out of it, so there have been some enforcement issues. Here is just an aerial of the site at one time. Staff did go out there and has spoken with the petitioner on a number of occasions and his plan is to completely move the business from this location to the new business location across the street where the zoning is appropriate. The issue with the new site is there has been very slow movement on getting improvements up and running and putting in stormwater detention. So, we are presenting this still because he is running it out of this site until he can get occupancy for his new site. This was a photo from last month before the BZA. This was taken yesterday. So, they are working on it. It is a little bit slower than we would like. We cannot issue occupancy until or a Land Use Certificate rather for the site until it is a little bit more stabilized. So, just wanted to note about the new site, we just want to see the petitioner close out the old site, which is asking for a Use Variance. The petitioner does not to actually run a General Contractor Use on this site and if it were approved by the BZA it would actually run with the land. They do want to move over to this new site but there has been some hold up in being able to get the improvements completed. So, just kind of giving you and update on both sites because they are somewhat related but separate. Staff is recommending denial for the Use Variance for the original site, 5601 South Old State Road 37, due to the fact it is zoned Estate Residential, has a residential use on the property and General Contractor is clearly not permitted. 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;
- 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;

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- 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 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: Anyone have questions for Jackie? Bernie.

Guerrettaz: Ok, just for the sake of my own keeping things in order here, so they are on the site on the other side of the road, they are on the other site and they are on the site that they are in violation they are still currently working off of that property. Is that correct Jackie?

Nester Jelen: The last that I spoke with Mr. Patzner on this site he was essentially still running out of this site because this site was not fully completely. So, we had talked to him about completely removing this site and I think he said he was going to put it up for sale once he was moved out and I just checked before this meeting and it is not up for sale. But the site did look relatively free of vehicles when I was out there and this was a few weeks ago. So, he is moving things out but, yeah, there is still some business activity to my understanding.

Guerrettaz: And is he working out of the new property?

Nester Jelen: He is not supposed to be occupying the new property until Building gives Occupancy and that is the issue is that if the other site has been slow to have improvements made and so he is kind of stuck in that. The other site needs to be finalized, cleaned up and we can issue Occupancy and Land Use Certificates but meanwhile he is a violation case running out of a spot that isn't zoned correctly.

Guerrettaz: Ok, I know that Skip has his hand, I am trying to kind of lay this out a little bit better because we have given, is Mr. Patzner, is he going to be on the call this evening Jackie? Do you know?

Nester Jelen: I did send it to him last week and I talked to him yesterday he might just have forgotten. I don't see him on here. I can message him real fast as well.

Kaczmarczyk: Skip, what questions are you having?

Daley: Real quick question. Jackie, what is it you are looking for at this point? I am not clear on that. Are you looking to offer time allotted ultimatum final or are you looking to say time is up tonight, no further business as of tomorrow morning? I am not sure what you are looking to do.

Nester Jelen: That is a good question Skip. What we are recommending is denial because the use

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is not permitted. We are trying to work with the petitioner to get the other site moving but as Bernie pointed out they are not issued Occupancy quite yet. So, ideally we have been working with the petitioner for several weeks and have alerted them of the timeline for a long time but they said they contacted an excavation company on July 1<sup>st</sup> and the earliest that company could come out was August 2<sup>nd</sup>. So, they did the detention pond excavating on the 2<sup>nd</sup> and the picture I took was from yesterday, so it has just been a little slower going this time of year, especially this year.

Daley: Would you be amenable to a motion saying 15 of October done?

Nester Jelen: So, the way that we have been advised by legal is essentially if the BZA does not want to see the Planning Department take on enforcement of the property in question, which is this red triangle, then the proper action I believe is to continue the case because it is not really the ability of the BZA to do like a sunset denial. It is more so that you would just table it and then deny it at a later date once it became an issue again.

Guerrettaz: Excuse me, Mary Beth.

Kaczmarczyk: Go ahead.

Guerrettaz: Are you done Skip? Excuse me.

Daley: Yes.

Guerrettaz: Ok. That is why I was laying this out. Is the list of items that they still need to do for the, I will just make it easy, yellow square, is it basically the landscaping and the bioretention basin? Is that what we are talking about? Are the hard improvements done as far as surfacing, building, those types of things?

Nester Jelen: Yes, there are some aesthetic things too, screen a dumpster, remove construction debris, which is called out, but I think those things could be done fairly quickly with the exception of the landscaping.

Guerrettaz: Alright. That is all that I have Mary Beth.

Kaczmarczyk: Anymore questions for Jackie?

Sorensen: I have a question Mary Beth. If this were denied tonight would he have to stop operating his business until everything is completed at the new site?

Nester Jelen: Essentially if the BZA denies this tonight we would be allowed to go ahead and restart enforcement on the property. So, typically we work with the property owner and give them 2 weeks or up to 4 weeks, in this case it is probably more like 2 weeks, to say you need to cease and desist at this location and locate at the other business elsewhere. We think that there is enough internal pressure by the owner themselves because they do want occupancy of this other site but obviously the BZA has seen this a number of times and so if you did deny it we would work with the petitioner to ask them to cease and desist as soon as possible and close it as an enforcement

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issue.

Sorensen: And some of the reasons he may have given were they reasons that were typical for a business to get started or were they just delays because he didn't follow through? Do you know? Do you have an answer for that?

Nester Jelen: Do you mean at the new site?

Sorensen: Yes.

Nester Jelen: I think in partially in talking with the petitioner, a little bit of staff frustration has been the number of times we have gone out there and have not seen the improvements that we think could have been made quickly and so it is almost becoming a duel enforcement case. Because we want them away from the incorrectly zoned parcel but yet the other site is just not there and we have had some issues all along. But as far as the delays that covid has brought those are serious and those have impacted this site certainly, so I can't speak to those exact delays but it has just gone along a lot slower than we had been promised by the petitioner and so it is just seeming like it is getting drug out a lot longer, which causes concern for the next stage of landscaping being completed and the site being completely closing out. We don't like to have to go out to a site for months and months and months. We just want to go out once and state that it is finished and be done with it.

Sorensen: Thank you.

Nester Jelen: Skip, you have your hand raised.

Daley: I do and I think what I am saying is I would like to move forward one way or another. I am "comfortable", I am going to use quotation marks with that, making a motion to table this 30 days and have that be my end final date so we can move forward with the rest of the agenda. Because I am kind of hearing mixed messages. I am hearing covid. There is progress being made now but it has been frustrating. So, I am willing to table this for the next meeting. I am not sure if that is the recommendation or not but if you guys are comfortable doing that I guess I am going to second it.

Kaczmarczyk: Bernie, you have your hand up.

Nester Jelen: Bernie, did you have your hand raised?

Guerrettaz: I did. Let's go through the public and then we will come back to the BZA, I mean before I ask my last question.

Kaczmarczyk: Ok, alright.

Nester Jelen: Sorry, Mary Beth. I accidentally pressed mute on your screen instead of my own.

Kaczmarczyk: Is the petitioner here this evening?



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Nester Jelen: I do not see him.

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

Wyss: Is this for Tom Wyss?

Kaczmarczyk: No, it is not.

Wyss: Sorry.

Kaczmarczyk: This is for Neil Patzner. I see no one here that wishes to speak on behalf of this petition. Is there anyone here that would like to speak against this petition? I am not seeing anybody that would like to speak against the petition. Are we ready for a motion then?

**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**

**ADDITIONAL QUESTIONS FOR STAFF - 1812-VAR-40 – Patzner:**

Guerrettaz: Mary Beth, here is my question to staff, is it reasonable and I think I heard you say, Jackie, is it reasonable to think that if they went under enforcement on the existing site, the red triangle, ok, that it would be probably 4 weeks before anything would happen as an enforcement action? Is that correct or not?

Nester Jelen: So, how we are operate and get letters and make contact to work with the petitioner, I think per the ordinance we could potentially issue things quicker but we are going to work with them and make sure that they can move to the other site. I think 2 to 4 weeks is a reasonable timeline before fines could be issued.

Guerrettaz: Well, where I am going Skip, and I understand, I mean, I am right there with you, I am just about ready to put a motion of denial on this to get that going and the reason why I say that is because we have covid or otherwise we have extended this petition multiple, multiple times and we have been very sensitive and there has been progress throughout the whole site even getting to a point where he was contracting and engineering and surveyor to help him get site plan situated. But if the metal work he has left to do can be done in 2 to 4 weeks, which is about the same time it would take for staff to barrel down the enforcement then I am leaning toward denial and that will give him time to get situated.

Daley: I stand with that.

Guerrettaz: I am happy to hear discussion on that from the members because I am not all the way

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there yet.

Kaczmarczyk: This case has been around since Peter was on the BZA so it has been pushed down the road quite a bit.

Guerrettaz: Well, I think this is what we do. I think it is a good think to work with the public and staff has done a heroic job helping this business to continue and to keep it going. But at some point I don't want this to be a table top approval to move it on to the next step when there is so man people in the community that do what they are supposed to do.

Kaczmarczyk: Yes, I agree. Do you want to go ahead and make a motion to deny?

Guerrettaz: I can make a motion.

Wilson: Just to clarify, Skip made a motion that is still on the floor, I think.

Daley: I will withdraw that motion.

Wilson: Ok, now we can proceed.

Guerrettaz: I am sorry, Skip, I didn't gather that that was a motion. I thought you were talking hypothetically. Excuse me.

Daley: Legally, I had to withdraw it. That's fine.

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

Guerrettaz: **In the matter of case 1812-VAR-40, Patzner General Contractor Use Variance to Chapter 802, I move that we deny the Use Variance, based on the staff report and findings of fact.**

Sorensen: I **second**.

Kaczmarczyk: Call the roll, Larry.

Wilson: I will call the roll. 1812-VAR-40, Patzner General Contractor Use Variance to Chapter 802 for the real estate located at 5605 South Old State Road 37. The motion is to deny the Use Variance. Again a vote of yes is a vote to deny the Use Variance. Vicky Sorensen?

Sorensen: Yes.

Wilson: Bernie Guerrettaz?

Guerrettaz: Yes.

Wilson: Skip Daley?

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Daley: In keeping with hopes that the Planning Department will work in terms of enforcement I vote aye.

Wilson: Mary Beth Kaczmarczyk?

Kaczmarczyk: Yes.

Wilson: The Use Variance is denied by a 4 to 0 vote.

**The motion in case 1812-VAR-40, Patzner General Contractor Use Variance to Chapter 802, in favor of denying the Use Variance, carried unanimously (4-0).**

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**OLD BUSINESS**

**2. VAR-21-24**

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

One (1) 0.5 +/- acre parcel in Benton North Township, Section 27 at 8188 E Northshore DR.

Owner: Wyss, Tom **Zoned SR**. Contact: [tberhman@co.monroe.in.us](mailto:tberhman@co.monroe.in.us)

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

**STAFF ACTION:**

Behrman: Jackie, can I have the ability to share a screen for this?

Nester Jelen: You should be able to now, Tammy.

Behrman: You know what, I don't have the slides pulled up. All I have is the packet. I apologize for not being prepared. I am going to stop sharing the screen. Sorry. This petition was heard back on May 5, 2021, just about 3 months ago. I was wondering, do we need a full presentation of this? I almost think Skip maybe was not present for that previous meeting.

Guerrettaz: I would like to have a full presentation just because it was because it was May, Tammy. I remember this was one that had a lot of moving parts.

Behrman: That is fine. Ok, I will get started on that. I wish I could just press play on the CATS link. So, this is the Wyss Side Yard Setback Variance to Chapter 804. It is a half-acre parcel in Benton Township North Section 21 at 8188 East Northshore Drive. Here is the summary, they are requesting a Side Yard Setback because they have encroached 3.3 feet into a 5 foot. By allowing this variance it would allow them to keep a 1<sup>st</sup> story and a 2<sup>nd</sup> story deck on an accessory structure. It was a permit that was issued way back in 2017 and we received a complaint that the structure was not being built on the property, which prompted staff to request an as-built. You will see the survey in a bit of what the result was but in summary they are here to get a Side Yard Setback Variance for some porches that were not entirely disclosed on a permit that was submitted. The zoning here is Suburban Residential. It is the orange. The Comprehensive Plan has it as Rural Residential. These are some of the previous site condition pictures. They are older aerials. On the left one you can see the red squares there is their half-acre. They did a significant amount of grading, which actually resulted in another enforcement case separate from this one. Since then I will state that during the staff's site visit the last time that the site was relatively stabilized. I did not see any issues with erosion at that time. We have a slope map to the right there showing all of these slopes are restricted at the time the grading was occurring for structures. These are some of the site photos. In the top picture you will see the residence that was permitted and then in the foreground is the accessory structure that is labeled as a boathouse. The bottom picture is another picture of the boathouse and you will see the decks that we are discussing here, the upper and the lower deck. The petitioner has complained that those are required for some accessibility to an easement that they own. Also in that picture there is like an overhead garage door that opens out straight onto the ground there supposedly to put boats in and out of. The top picture again we are showing the decks, the upper and the lower decks that both have the doorway entries out to the east side of that structure and the garage door. The right hand picture is the west side where you see and upper and lower deck as well. There is no setback issue here. In fact you will see on the

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lower floor a zero step entry, which is accessible and there are 2 doors in front of the structure facing south, they appear to be like large sliding doors. You might want to ask the petitioner exactly what, how those work. This is the southern side of the accessory structure. They are allowed to be 10 feet off of the property line with the structure. What you will also note is that there is a lot of gravel. They have slopped over their property line and are on City of Bloomington property here with their access and they are storing materials on the City side as well. The City has also taken some minor enforcement procedures on this petitioner in the past as well. The bottom picture is just kind of for the record that they hooked this accessory structure, this boathouse into the septic system. There were claims during the previous May 5<sup>th</sup> hearing that the petitioner had a 5 bedroom septic installed but the Health Department only had a 3 bedroom septic recorded here and I did upload and there is a link to it in the staff report, the 30 page septic document. Staff did request the alternative document from the petitioner and we have not seen that come through. Again these are some pictures. The upper is the accessory structure from the front showing some of the extra doors and then there is an aerial view. I am not sure what year that is from. But it looks like it was prior to some of the erosion control enforcement. Again, one of the aerial photos of the of the right hand structure being, the accessory structure in question. The shelter house that was to the north there, staff has not confirm that that has been removed. But it should not be there. It is in an easement. Another aerial photo of the site. This is the petitioner's letter on the left. This is the site plan, this is the as-built that was submitted. They added a driveway onto here, which we had issues with because the City of Bloomington did confirm that there is no easement for that area and so we had requested a new site plan. The as-built here you can see, I might have on the next slide, Jackie, no I do not, sorry. The as-built Jackie is demonstrating that there is the deck that is 1.7 feet from the property line. Now we are going to get into this Easement Agreement that was put together in 2015 with the neighboring property, the Zimmerman property. So, on the right side you can see highlighted in yellow there the Wyss property. That is the half-acre. He is leasing from his neighboring property, the Zimmerman property, which I don't know how many acres it is, but he has put together a document stating that the land to the west and the east of him is for recreational easement. This is the way that it is drawn up allows him to have his septic system on that site. It can restrict the access of the actual property owner from using this property and it also left the Zimmerman property owner with a lake access that is very long and narrow and goes straight down a hill and has not functioned properly as an access to the lake since all of the construction and grading work had occurred. We had a supporting document that the petitioner submitted stating that the reason they needed these 2 porches to the side was so that they could have a handicapped ramp for medical reasons for a family member. We do have a couple of letters of concern from the neighboring property, the Zimmerman property and then we also have the City of Bloomington. They are not expressing interest in the side yard setback necessarily. They are keeping an eye on their property in other ways, though I think they would appreciate, they are interested in what this garage or boathouse actually turns into. A lot of neighbor have expressed concerns. I have fielded another phone call regard that and here we have another letter of concern regarding this property. Hopefully, you had a chance to read some of these. They were in the packet. We have had some difficulties getting the petitioner to submit additional information. We had requested an updated site plan that showed the driveway and explained more about this ADA ramp that they were wanting to put in because obviously from the photos that does not look accessible down to the ground. We also had requested that they provide some details of the ramp like the height and the slope measurements and also that septic system document claiming that there are 5 bedrooms for this site. So, today submitted, I am not sure what time, I barely saw this come through, there was

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no further outreach, we had one document uploaded into our OpenGov portal showing their ramp design. They are stating that the 4 foot wide ramp will have a rise of 1 inch from the end to end. It is 12 feet long. 36 inches wide, which is better than ADA standards. I didn't have a lot of time to evaluate this. I did look up briefly that residential structures do not have to meet commercial standard type ADA ramps. So, I am not 100 percent sure that this is an acceptable design. It is kind of hard to tell from a side view and I have seen that some of the turnaround like where the platforms are should have a proper entry out the door that allows a wheelchair to turn around and also to land on a solid landing. I don't have any documentation on that here but I am going to put that this was submitted today. Staff recommendation for VAR-21-24 is to deny the Side Yard Setback based on the finding of fact, specifically Finding C. It is a self-created hardship. We do think that there are other ways to make the residential accessory structure or boathouse accessible. We do see areas where there are 0 step landings. They have the flat drive area that crosses to the south, so at a minimum I think there is that 2<sup>nd</sup> story deck that also encroaches into the setback and there is not a way for, that should not be claimed, for the ADA accessibility. Does anyone have any questions?

### RECOMMENDED MOTION:

Staff recommends **denial** the side yard setback design standards variance based on the findings of fact specifically Finding C.

### QUESTIONS FOR STAFF – VAR-21-24 – Wyss

Kaczmarczyk: Are there any questions from the Board for Tammy?

Behrman: Bernie?

Guerrettaz: Just a couple of minor things. On the Borgman drawing and the way I look at the Borgman drawing that was submitted today, that was done by a licensed professional. So, a lot of that we can take that as being compliant with the ADA standards because it does mention it. I am not going to go there too much but that adds some credibility to me. The 48 inches is what the width of the porches are that come off the side of the house. Correct? For them to be compliant they would need to remove basically 1.7 feet from the east edge of the porches that are closest to the City of Bloomington. Am I right on that?

Behrman: The side yard setback? I think the entire part of would need to be removed. The structure itself does meet the side yard setback and actually has a half of a foot extra. So, if they are half a foot extra then they need that 3 and half feet basically to accommodate the ramp.

Guerrettaz: Ok, so they need 5, so they are 3 foot, they have a 3.3 foot encroachment is what you are saying.

Behrman: Correct, currently with what is built there now.

Guerrettaz: Ok, that clears that up.

Behrman: I will say I didn't check the date of this drawing. I am not sure if this was added by the petitioner or if the area in red, I am not positive if that was actually a Todd Borgman drawing or if

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that was from the petitioner. You will want to ask that probably.

Guerrettaz: We should ask that because that is a difference.

Behrman: We can do that after, I will keep going.

Guerrettaz: So, again from our last meeting, is there not a question of use here also?

Behrman: There is no occupancy for this structure yet and until there is a Certificate of Occupancy for it we can't tell what it is being used for. It is currently under construction.

Guerrettaz: Ok, I understand that. That question came up. That is a great answer. Thank you for that. I do note in the letters that the City of Bloomington says that there is little concern with what...

Behrman: With regard to the side yard setback and I am going to have to mute because a train is going by, your train Bernie.

Guerrettaz: Ok, that is all that I have got for now. Thanks Tammy.

Sorensen: Bernie, I did see that there is a date on this. Dated January I think 16<sup>th</sup> of 2021.

Guerrettaz: Yeah and that is very good. I think what Tammy maybe wondering is did Mr. Borgman edit the red rectangle, the arrow and the text or was something that maybe the petitioner put together as an illustration.

Sorensen: Oh, I see what you are saying.

Guerrettaz: You see what I am saying and that is a great question, an excellent point to pull out, Tammy.

Kaczmarczyk: Ok, are there any further questions for Tammy? I see none from the Board. So, is the petitioner here and would they like to speak?

**PETITIONER/PETITIONER'S REPRESENTATIVE – VAR-21-24 - Wyss**

Wyss: Yes.

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

Wyss: Yes.

Kaczmarczyk: Please state your name.

Wyss: Thomas Wyss. I am the owner.

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Kaczmarczyk: What would you like to tell us sir?

Wyss: Well, basically we are just trying to put a wheelchair ramp in. The setbacks for all of the buildings and all of the structures meet the code as they are supposed to be. The portion, the deck portion that she was talking about, the 1.7 encroaches on the easement next door, which we have full control of on both sides and if you look at the pictures previously there is a garage door there. I will tell you that Tammy Behrman told you that terrain for the driveway coming down from the very top hill down to the bottom of the hill is very, very steep and treacherous for a person in god shape to walk down. I do have a sister in a wheelchair. I am trying to get her to have some lake access as far as visiting and the plan was to drive down and pullup around the building, which we have plenty of room where the garage door is there and get her out of the car and get her up on the deck with the wheelchair ramp that is right next to the building. So, it is as simple as that. Nobody is next door where it would be an encroachment problem if you look at the pictures that are zooming up there. It is all about access for somebody that is disabled. It is that simple.

E. Wyss: This structure is not...

Kaczmarczyk: I am sorry sir, what is your name?

E. Wyss: Evan Wyss.

Kaczmarczyk: Thank you.

E. Wyss: So, this structure in no way, shape or form is a house or any sort of residential structure. It is simply a garage that was built to a standard to not look like an ugly garage. It is supposed to be better looking. I don't know why that it keeps coming up that it's a house. That is completely false. There has never been any intent. If you go inside there it is an open structure. There is no demising walls for bedrooms or anything of that nature. It is simply a boat shack where we are going to park a boat in the winter time to keep it out of the snow. That is it and to load up people and to take the down to water and have a good time.

Wyss: I also have an easement for our dock through the city through the conservancy. The building is only 24 feet wide. Why people keep saying that we are going to have somebody living in there is ridiculous. My privacy is paramount with the house above. No one is going to be living in there. I did, I have been going by the book all along and I wanted a bathroom in the because if you walk from that building anyone of you on the Board up to the house to go to the bathroom you will wish you wouldn't have done that. So, that is whole thinking behind that. I told the septic people, the Board of Health, Randy Raines, he came out and he said he wanted a 5 bedroom. It cost me a lot more money to put the 5 bedroom in versus the 3 bedroom. The house only has 2 bedrooms in it. Nobody will ever be living in that structure and the whole reason I built it like that if you look at the overall picture it looks like the upper structure. The roofline and everything. I wanted them to look good and they do look good. I hate to say that. This is all about my sister getting down there, you know, we drive her down there and unload her in there and she can enjoy the lake like the rest of us. It is the simple.

E. Wyss: To address a couple of things at the beginning, to say that we cut off access to all of those



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things, that is simply not true. We rebuilt an entire road to the tune of almost \$100,000 and had it prepped. It was inspected. It was signed off by the County and handed over to the other residents and we made sure they had access to the lake before we cut their access off even though we didn't really have to do that. That was the neighborly thing to do and they failed to maintain the road from that point moving on and there is nothing that we can do about that. It is up to them to maintain their access to the lake just like it is up to us to maintain ours. That is hurtful to hear that comment go unattested. That is where we stand on that. The 5 bedroom thing that is some sort of paperwork mishap. There is literally a 5 bedroom septic system in the ground. We have receipts to prove it, taking out more money and redoing it. I mean, this whole thing all we are trying to do is just provide someone access to a building, to the lake, over 1.7 feet and all this other stuff is getting drug into it, which would never even been talked about to begin with. I am just trying to figure out how we can wrap this up today and move forward.

Wyss: I would like to add the access that we put in on the other side of the property, it was an agreement that we do that. We did our part and it passed the County inspection and it was turned over to the neighbor lady, who has been doing all of the complaining, I know. Through mediation she is not supposed to be filing any complaints, that is a written documents and she has been causing more trouble in the neighborhood all about this. But they allowed this thing to go downhill and cause an erosion problem over there. It is out of our hands. I did that in good faith and it did, it cost me a ton of money and they just let it go and that is all they did. Matter of fact I think she walked away from her land probably 6 months ago. It is in foreclosure.

Kaczmarczyk: Ok, thank you sir. Does any of the Board have questions for the petitioner? I see Skip has his hand raised. Do you have a question?

Daley: I do. Thank you. Is it Mr. Wyss, is that your name?

Wyss: Yes, sir.

Daley: Mr. Wyss, I am a little confused. I am hearing you have an open building inside there but you need to drive around a family member who is confined to a wheelchair. If it is an open building, what I am not sure of is why would you design an external deck and ramp as opposed to being able to provide access through the door, which is facing 0 slope on the opposing side of the garage door?

E. Wyss: That is a good question. So, she became disabled after this project was started, otherwise we would have designed it differently. That is on us. We accept the fault there. But we are still in construction and we thought this was a good time to do it as any so we want to get her down there.

Wyss: The other thing too is it is just a little workshop. I am retired now. I ran a business for 40 years to service the public and also worked in surgery many years and I do know about disabled people. I still have my license to work in surgery. Keep it simple it is just a workshop. I am telling you if you do have go the bathroom you don't want to have to march up that hill on a bad day so to speak but it is a climb and believe me if you do it one time anybody on the Board you would understand totally what I am saying. It is just going to be a small bathroom that is it. Randy Raines of the Board of Health, the septic guy, he said it doesn't matter how many bedrooms you have up

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there. I only have 2 in the house. You can't be in the bedroom and the bathroom at the same time. So, it was his call to make it a 5 bedroom and I went to the 5 bedroom by his call. There was no way of fighting back on that. He said I want a 5 bedroom so that is what he got.

Kaczmarczyk: Ok, thank you sir. Does that answer your question Skip?

Daley: I am not quite certain but I have heard their peace.

Kaczmarczyk: Ok. Bernie you have a question.

Guerrettaz: Ok, first of all Evan and I will call you by your first name just to differentiate between you and the gentleman to your left. When I brought up the use just to be clear, I am not accusing anybody of using the property for a different intent than what is stating in the petition. But it has been since May when we had this hearing before I just wanted to bring that point up because it was a question asked. So, I am happy with Tammy's answer and I am not going to dev into that and at the time of occupancy my assumption would be if there is a use in there that doesn't match what the allowed use is then we would maybe see it again. So, I am going to put that to bed.

E. Wyss: Ok, that is fine.

Guerrettaz: From my standpoint. So, secondly we have got the survey by Todd Borgman showing this access ramp and then the rectangle with the red text and if you had that at the last hearing I didn't catch that, pardon me. Is that text on that, is the insertions on the ramp, are those done professional engineering surveying firm or was that just you put it on there as an exhibit to illustrate what your plan was?

E. Wyss: So, I did those. I tried to upload them about almost 4 weeks ago and they didn't stick. So, I did it when I got on for the meeting this morning to make sure everything was there I noticed it wasn't on there, so I uploaded it again. So, that is why it looks like it came through last minute. But I work in the commercial real estate industry in shopping mall and centers and I had one of our CAD people put this together. I didn't realize you guys wanted a totally re-engineered site plan. I thought it just needed to show the dimensions is what was communicated to me I believe. So, that is what I did. It shows, I tried to keep it as basic as possible because it is a ramp and there is really no drop off. It is just about an inch and 12 foot takes you about almost all the way to that garage door where it will be a seamless transition. It will be 36 inches wide. There will be a handrail and the porch itself where you land will be 4 foot.

Guerrettaz: Ok. Tammy or Jackie, would you go to one of the photos that shows the building where that I don't call it, porches are, or decks, whatever we are talking about here? Ok, so from, and bear with me here because we are trying to describe things over the internet on the screen, so you have got the white door and that is basically at the very end of where this porch is or this deck.

E. Wyss: Correct.

Guerrettaz: What's that?

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E. Wyss: That will be the top of the ramp right there.

Guerrettaz: Ok. So, there from there it is going to go to the north and it is going to bottom out on the ground. Is that correct?

E. Wyss: Yes.

Guerrettaz: So, the plan would be for that to dead end at basically pretty close to where the garage door is at.

E. Wyss: Yes, pretty close to it.

Guerrettaz: So, then what is going to happen, is there an interior access? Why do we need a handicap ramp there to get to the garage door?

Wyss: To get on the porch.

E. Wyss: Yes.

Guerrettaz: So, if someone is inside the garage or inside the building and they want to go out through the garage door then they can go up the ramp and then they get on the porch.

Wyss: No, it goes directly up to the porch. If you look at that it goes just past that access door there is a porch on the front of the building and it is all the same level.

E. Wyss: Are you asking why couldn't they just go in the roll up garage door instead of the small door? Is that what you are asking?

Guerrettaz: Yes, I mean if this is just a big open room and we have made the door and we have made the porches and everything else aesthetic to what the structures are that were already in, why are we, is it a single level on the inside of the building or is it multiple levels?

E. Wyss: It is levels and it is pretty much just storage upstairs. But downstairs if there is a boat or a truck parked garage, I don't want to have to have my aunt navigate that in her wheelchair. Not only that, it is kind of a dignity thing. I don't want to say, hey, Aunt Pat, go through the garage everyone else is going through the front door. It is a convenience factor. That is all it is.

Guerrettaz: I can understand that. I guess what I am trying to understand though is if your aunt or some other person that needs ADA assistance is inside the building when can't they just go, Jackie or Tammy could you go to the front of the building where this corner wraps around? Because I really am trying to get my head around what the need is here. If it is all one level on the lower floor, why can't somebody come out the door and come out on the front porch?

Wyss: Well, I plan on having table saws, drill press and other things in there just as a hobby and for her to be inside a small workshop, like I said it is only 24 feet wide. It is pretty small. Then when you put tool and other things in there. Her whole deal is just to get on that porch and it

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overlooks the lake. It is that simple.

E. Wyss: One more thing, the picture on the top left corner of the screen here you can see there is an ingress door there that looks like it could be fairly easy to access but in reality the ground is a little bit graded there. It is not as flat as it is on the other side. So, that was also another reason why. We would like to do a ramp there it just might impede in the driveway and it is just harder to do it there. It doesn't look like it is but it is.

Guerrettaz: Are there stairs? Is there an elevator? What is on the inside that would get a person up to the upper deck?

E. Wyss: Nothing.

Wyss: Nothing. It is just going to be a workshop.

Guerrettaz: So, what is the purpose of the deck on the upstairs?

Wyss: Just to look out.

E. Wyss: It was to match the house mainly.

Wyss: It was to match the house and the way the building is. You only have so much land to build on so you might as well take the best use possible with your land and after 40 years and kids you end up with a lot of stuff you got to try and put away.

Guerrettaz: Well, I can certainly respect that. I guess we are getting tangled up in this ADA ramp and I don't think that we have got anything that is illustrating. Tammy, do you need something to illustrate the elevations and grades of this ramp? Because right now I don't see that we have a drawing that illustrates compliance to ADA standards or what the final goal is and if it is something that can actually, I am not approving an ADA standards ramp for sure.

Wyss: Well, this is a residential ramp. Let's keep that clear. The public is not invited. It is strictly family and I am not going to build something to where I am going to damage my sister's health. Like I said, I have been in healthcare for a long time. It is a pretty simple little ramp. We have already had to pay an engineer over a \$1,000 deal with this little 1.7 little sticking out and actually we have control of that whole lot, the other half acre. It is not bothering anybody.

Guerrettaz: It is actually 3.3 feet, isn't it?

E. Wyss: I think it is only 1.7 actually if you look at this map right here it shows 1.7 from the edge.

Wyss: It angles.

Guerrettaz: Yes, but Tammy isn't the encroachment on the setback 3.3?

Behrman: Yes.

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E. Wyss: I just don't see where we are getting to 3.3 honestly.

Guerrettaz: Well, the 1.7 is the distance from the porch to the property line, ok and the structure is 5 and half feet so the setback you are supposed to have, it is supposed to be 5 feet from the property line, the bold black line before you can build anything.

Wyss: That is the whole reason we are here. That is the whole reason why we are going through this process because it was built with just the deck. There is no roof over it or nothing.

Guerrettaz: Right. I was just explaining to Evan the difference between the 1.7 and the 3.3.

E. Wyss: Ok, so I follow your logic there. So, it looks like maybe 2.2 feet or so but yeah. It is not a ton of distance. I agree with you. We don't want to waste you guys time. You guys got more important things to talk about, we just need to get an answer today. Are we going to get access for a woman who would like to be there or not? So, we have got to move on and I honestly thought this would take 10 minutes. I really did.

Kaczmarczyk: Any further questions Bernie?

Guerrettaz: No.

Kaczmarczyk: Is there anyone else here that would like to speak on behalf of this petition?

E. Wyss: No, we are good.

Kaczmarczyk: Is there anyone here that would like to speak against this petition? Not seeing anyone. Do any of the members of the Board have a motion that they would like to make?

**SUPPORTERS – VAR-21-24 – Wyss: None**

**FURTHER SUPPORTERS – VAR-21-24 – Wyss: None**

**REMONSTRATORS - VAR-21-24 – Wyss: None**

**ADDITIONAL QUESTIONS FOR STAFF - VAR-21-24 – Wyss: None**

**FURTHER QUESTIONS FOR STAFF – VAR-21-24 – Wyss**

Guerrettaz: **In the matter of VAR-21-24, Wyss Side Yard Setback Variance to Chapter 804, I move that we deny the variance, based on findings of fact as found in the staff report.**

Kaczmarczyk: I will **second** the motion. You want to call the roll Larry?

Wilson: Sorry, I had to unmute. The vote is on VAR-21-24 Wyss Side Yard Setback development standards variance to Chapter 804 for the property located at 8188 East Northshore Drive. The motion is to deny the variance based upon the findings, based upon the staff report. Again, a vote

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of yes is a vote to deny. Bernie Guerrettaz?

Guerrettaz: Yes.

Wilson: Skip Daley?

Daley: Aye.

Wilson: Mary Beth Kaczmarczyk?

Kaczmarczyk: Yes.

Wilson: Vicky Sorensen?

Sorensen: Yes.

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

**The motion in case VAR-21-24, Wyss Side Yard Setback Variance to Chapter 804, in favor denying the variance, carried unanimously (4-0).**

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### OLD BUSINESS

- 3. VAR-21-42a**      **Kennington Karst & Sinkhole Development Standards Variance to Chapter 829**
- 4. VAR-21-42b**      **Kennington Buildable Area (15% Slope) Variance to Chapter 804**  
One (1) 0.39 +/- acre parcel in Van Buren Township, Section 13 at 3316 W Jordan CT. Owner: Kennington, Corey D  
**Zoned RS3.5.** Contact: [rpayne@co.monroe.in.us](mailto:rpayne@co.monroe.in.us)

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

### STAFF ACTION:

Payne: Can everyone see the slide?

Kaczmarczyk: Yes.

Payne: Great. This is a request for a variance to the 15 Percent Slope requirement, which is Buildable Area from Chapter 833 as well as a variance request to the Karst and Sinkhole Development Standards of Chapter 829. This is for one 0.39 acre parcel in Van Buren Township, addressed at 3316 West Jordan Court. It is currently zoned RS3.5 and the Comp. Plan shows it as Suburban Residential. This petition was heard at last month's BZA but the motion failed due to lack of a quorum. I think that was the case on this one. So, at any rate it is back here tonight for your consideration again. The petitioner is wanting to construct a 12' by 16' shed on their property and their proposed location of the shed is in slopes that are greater than 15 percent, thereby violating our slope regulation and additionally the proposed location of the structure is not meeting the ordinance's requirement of a 50' setback from sinkhole rims for structures. So, in other words where the petitioner ideally would like to put this shed is within the 50' distance of the sinkhole rim. Here we have some site photos. On the left side of your screen you can see the position or location of the proposed shed. The petitioner had gotten a little bit started on the project and then realized or was informed that he needed to pursue the variance. You can see that he is intending to put the shed on these concrete piers. Obviously he is aware of the sinkhole on his property so he was sort of factoring in that with the design of the concrete piers. The photograph on the right is a shot kind of looking across the yard and while it is hard to pinpoint the sinkhole, it is somewhere back there in the woods sort of on the right hand side of this picture that is on right hand side of your screen. The relationship between the sinkhole is probably over here and here is the proposed shed and so it is this distance that is not meeting the 50' requirement. Here are some more photographs. The picture on the left is a shot looking up at the back of petitioner's house. The picture on the right is another close-up of the beginning of the construction of the shed. This is a photograph of one of the side yards for this property and I will speak a little bit more about this in a moment, I will speak about this when we get to the recommendation piece but staff thinks that here at this side yard location it could be a possibility for the petitioner to relocate the shed. If he did that it would eliminate the need for the variances. On the left is the petitioner's letter to the Board of Zoning Appeals. On the right is the site plan that was submitted. In terms of a recommendation, Planning staff recommends a denial, that we deny this variance request, deny the design standards variance to the Buildable Area, 15 Percent Slope standard in Chapter 804 of the Monroe County Zoning Ordinance and once again we do think that an alternative location at the side of the house would be a better possibility. Regarding VAR-21-42b, staff recommends

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denying the design standards variance to the Sinkhole Conservancy Area standards, which are in Chapter 802. Finally, I just wanted to show this contour map, which gives I think a little bit better of an illustration. The highlighted contour here is the 812 contour and we determined that is the closed contour that we are considering the rim of the sinkhole. So, it is from the contour 50' away that is the goal to locate the shed 50' from this closed contour. Although, we don't know exactly how much in violation the proposed location of the shed is we do know that it isn't meeting the 50' setback. With that I will take any questions.

CASE NUMBER	DETAIL	RECOMMENDED MOTION
VAR-21-42a	Buildable Area (15% slope) Chapter 833	Denial
VAR-21-42b	Karst & Sinkhole Development Standards	Denial

812-6 Standards for Design Standards Variance Approval: In order to approve an application for a design standards variance, the Board must find favorable findings for all three (3) criteria, A, B, and C, listed after the agenda within the BZA packet.

### ***Recommended Motion Conditions or Reasoning:***

**VAR-21-42a = Deny** the design standards variance to the Buildable Area (15% Slope) standard in Chapter 804 of the Monroe County Zoning Ordinance based on the findings of fact. Petitioner could re-locate the shed outside of 15% slope thresholds.

**VAR-21-42b = Deny** the design standards variance to the Sinkhole Conservancy Area (SCA) standards in Chapter 829 of the Monroe County Zoning Ordinance based on the findings of fact. Petitioner could re-locate the shed outside of SCA setbacks.

Relocating the shed to the southeast (side yard) would eliminate the need for both variances.

### **QUESTIONS FOR STAFF – VAR-21-42a & VAR-21-42b - Kennington**

Kaczmarczyk: Does the Board have any questions for Rebecca?

Sorensen: I have a question. Sorry Bernie, go ahead.

Guerrettaz: You can go Vicky.

Sorensen: I was just going to ask is this in a subdivision that would have a Homeowners Association that he would also have to go before them to put the shed in.

Payne: Might defer the question to the petitioner. I don't know about an HOA. I do know that he is in a platted subdivision.

Sorensen: Ok, I will ask.

Kennington: That is no.



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Payne: Thank you Corey.

Kaczmarczyk: Bernie, did you have a question for Rebecca?

Guerrettaz: Rebecca, a couple of things. One, you have a photo of where you suggest, or where, excuse me, where staff suggests, yes. What is that white thing? Is that just a landscaping rock or something down along that grass line?

Payne: I think it is a tree stump. Once again, the petitioner can confirm that but I think it is a tree stump.

Guerrettaz: Ok, so is that, help me out here, is that, which side of that house is that on?

Payne: That is on the east side of the house.

Guerrettaz: Ok. How close to the property line is the house to the west, on the west side, roughly? Is it right on the setback?

Payne: It is pretty tight. It is tight. Let me flip back to the site plan. I'm sorry, I went the wrong way. The proposed shed lines right up with the existing single family residence, so on the west side it is pretty tight.

Guerrettaz: Currently.

Payne: Correct.

Guerrettaz: Could you put your curser back where you just had it? Ok, so go to your right. Keep going. Is that where you proposed the shed?

Payne: Yes.

Guerrettaz: Ok, thank you.

Kaczmarczyk: Any other questions for staff from the Board?

Daley: I have a quick question. Rebecca, with that slide up can you point to approximately where the 50' would begin? I can see the house. I can see the street. I can see the proposed shed. Can you point approximately to where the 50' setback would begin? Because you said that is at the very top ridge, correct?

Payne: Yes, so I think the scales are different between the contour map I showed you and this obviously but if we traced if we looked here at the contour lines, it was the 812 and I am really sorry, I cannot read these numbers in this view. I this one is the 812 right here. I am not sure. Is that 812? Can anyone read that?

Nester Jelen: It is, but I also think it's closed but it's around where your curser is it looks like.

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Payne: Skip, hopefully I didn't confuse matters but what I was trying to say is that while we don't have an exact measurement of how much in violation the proposed shed is, we just know that is within the 50' of the rim.

Daley: It doesn't look to me like they have any buildable space other than the side of that house then and it also looks to me as if that deck potentially encroaches on there.

Payne: You are right. Their site has quite a few constraints related to the slope and the sinkhole. Regarding the potential for the shed to be located on the right it would certainly, I guess I should say on the east side, it would certainly pinch down that area of the property and I guess the petitioner would have to likely reorient the shed so that the narrower part of the shed is parallel to Jordan Court so that he doesn't violate the side yard setback.

Daley: I am not trying to beat a dead horse here but I have got a quick question regarding explain to me in laymen's terms the point of that 50' setback and how damaging that would be for what looks to be like a plain old utility shed. Because you are opposing this right? Your recommendation is denial.

Payne: Yes. We are recommending denial. Because if we measure this up against the ordinance the ordinance says do not put or construct anything within 50' of the rim of a sinkhole. We are looking at that and applying that.

Daley: Is there a threat, is the belief that within 50' of there it is threaten to come down?

Payne: Yes, I would think. Larry, if you are still on you can weigh in but I am assuming that is the purpose of the ordinance is to protect and buffer the sinkhole so that there is no jeopardy or less jeopardy of something falling in and collapsing and the sinkhole gets bigger.

Wilson: It is a buffer and the idea is that we do not want disturbance within that buffer. We allow people to do certain landscaping and so on within the buffer. We do not allow structures. We do not have the sinkholes that they have in Florida where house and neighborhoods disappear but it is not unknown for structures to be affected by being close to sinkhole rims in our jurisdiction as well.

Daley: I am sorry to interrupt but is it not true that the disturbance would have already happened because it looks like the concrete posts are already in the ground? Is that right?

Wilson: The sinkhole is a dynamic situation. You really can't say, so we have already done the disturbance, it's done. Because there could be additional work done around it. Obviously you would need to access the shed somehow.

Daley: Ok.

Kaczmarczyk: Does that answer your question Skip?

Daley: Yeah, I think I am sold. Thanks.

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Kaczmarczyk: Ok. Is the petitioner here and would they like to speak?

**PETITIONER/PETITIONER'S REPRESENTATIVE –  
VAR-21-42a & VAR-21-42b - Kennington**

Kennington: Yes, I am here and yes I would like to speak again.

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

Kennington: Yes.

Kaczmarczyk: Please state your name.

Kennington: Corey Kennington, the owner of the property.

Kaczmarczyk: Ok, sir, proceed please.

Kennington: Regarding the 50', no one really knows has been able to pinpoint exactly where it is but if you go by that 812 line my house isn't even 50' from that. On the side yard it would also not be 50' from that 812. The reason that I am trying to put it back where I am is because as Skip pointed out there is really nowhere else to put it unless I want it in my front yard. Because on the side there, although that looks like a pretty decent sized space more than half of that is actually my neighbor's property. There is actually less than 13' between my house and my property line there and according to Rebecca, she said my setback is 8-12' from the property line. The problem why I can't build it there is partly because all of my drainage if you look at that picture that is showing right now, all of the drainage from both stories of my house all go down that little gully to drain back to the back of the property, so you would be putting a shed right where all of the drainage for your entire property is going. So, everything from my front yard is all shed down to that area including all of the stuff that is captured on top of my house. That is the main drainage for the area. Whereas where I am proposing putting it in the back is out of the way. I am already back there every week to cut the grass so it is not like I am disturbing anything more than it is going to be besides putting that shed there and regarding property loss it is garden shed, it is not like you are housing people there. Even if the world opened up and sucked in that shed, it is not a huge loss there and the other thing is the sinkhole is fairly far back but yet no one can tell me exactly where and/or where the sinkhole is. So, it is really not defined rules that we are going by here. But that is the best location for this proposed shed. I mean, there is no other real spot to put it. Maybe you could put like a 1' wide storage container there on the side if that is the only thing you can do. That map there is kind of skewed. If you see how the property line is drawn on that aerial map to the left there that line goes right through my garage. So, it is kind of skewed. Although, it looks like I have a lot of land over there on this picture that is not really true. Over half of that is my neighbor's property. That is all that I have to say unless my wife wants to say something. My wife is also here.

Kaczmarczyk: Does anybody have any questions for the petitioner? Bernie?

Guerrettaz: I have just got a couple. Tell me about the construction. Is it Mr. Kennington, is that

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correct pronunciation?

Kennington: Yes.

Guerrettaz: Jackie or Rachel could you go back to the picture that shows the piers for the shed? There you do. For the construction are you going to just mount base plates on those concrete piers and then bring them up with a 4' by 4' and then on the front side it will be the door will be at ground level and then at the back side you will just have floor joint and then it will just come to the ground, it will be elevated on the back and ground level on the front? Am I assuming that properly?

Kennington: Yes, so like the front is going to be like where the door is at the front to make it easily pull my lawn mower in and out and the back is going to be up on 6 by 6's and they are all going to be tied with like 5 eighth inch drilled in rebar or not rebar but all-thread mounted in there with Simpson ties. So, 6' by 6' yes and it will be off the ground in the back on 6' by 6's

Guerrettaz: Ok and you are not going to have, you are not pouring a concrete slab, and you are basically going to have an elevated wood floor. Is that correct?

Kennington: That is correct. It is going to be just above ground level. It a little bit off of ground level because I didn't want to disturb any drainage that did happen so any drainage is still going to be able to pass underneath the shed that is there. So, it is going to off the ground in the front just a little bit, enough to let the watershed go through there but the back is going to be elevated.

Guerrettaz: Ok. I noticed on the deck it is the same type. Did you build the home or did somebody else build the home?

Kennington: No. I bought this home. I just replaced a couple of the boards on the deck and finished it last year but the deck was there when I bought it.

Guerrettaz: It looks great. It looks like the same type of construction was done on the deck.

Kennington: Yes.

Guerrettaz: The practical difficult that I am kind of seeing right now is a couple if things; one, you know, a person has to have places to store things. In a residential home a storage shed is something that is reasonable and access to the back of your home for repairs if somebody is hurt for all types of different things is necessary. While staff has picked out a location that may work on the east side, I think that a building there would impede the ability to come to the back of the house for anything that is either semi-necessary or very necessary. So, I think that I can see how the shed on the east side wouldn't necessarily be useful to the use of the house. I also like the fact that, if it were me to have the shed in the back and that way I would have less concerns may with security and people getting in my stuff.

Kennington: And an eyesore in the neighborhood because I do have a neighbor that pulls her tractor back to her yard right there and putting anything on that side there would impede her ability to do

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that. Because she has stump in her yard there.

Guerrettaz: Yeah, I am not too concerned about how it looks. But if you are I understand and I can respect that. So, one comment I want to make sure that you understand. I don't need as a BZA Member to know exactly where the encroachment is based on what the 50' is, but staff has done a very good job explaining what the situation is. Apparently you agree. But it is your burden to prove if there are incorrect that you are not encroaching or what that encroachment is if it makes a difference. So, just suggesting that is probably tread lightly on that one because there are ways that can be figured and they are not inexpensive to do. That answers my questions. Thank you very much for indulging me to asking a few things of you.

Kaczmarczyk: Anyone else have any questions for the petitioner?

Wilson: I have a question for Rebecca, just to clarify. The shed will not be in the platted Conservancy Easement. Is that correct?

Payne: Correct.

Wilson: Ok. I just wanted to verify that. There is a platted Conservancy Easement at the back of this lot with the sinkhole that designates an area where there can be no disturbance at all. But it is somewhat distant from this particular shed. But the shed is still in the 50' area from the sinkhole rim.

Guerrettaz: Thanks Larry. That is very helpful.

Kaczmarczyk: Ok, any further questions for the petitioner? Would anyone else here like to speak on behalf of this petition? Seeing none. Is there anyone here that would like to speak against this petition? Seeing none. Would a Board member be ready to make a motion?

Guerrettaz: I can make a motion.

Kaczmarczyk: Yes, please Bernie.

**SUPPORTERS – VAR-21-42a & VAR-21-42b – Kennington: None**

**FURTHER SUPPORTERS- VAR-21-42a & VAR-21-42b – Kennington: None**

**REMONSTRATORS – VAR-21-42a & VAR-21-42b – Kennington: None**

**ADDITIONAL QUESTIONS FOR STAFF –  
VAR-21-42a & VAR-21-42b – Kennington: None**

**FURTHER QUESTIONS FOR STAFF – VAR-21-42a & VAR-21-42b – Kennington**

Guerrettaz: In the matter of, I am going to do both of these together, Mary Beth is that ok with you?

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Kaczmarczyk: That works. Yes.

Guerrettaz: Ok. **In the matter of VAR-21-42a, Kennington Buildable Area 15 Percent Variance to Chapter 804 and VAR-21-42b, Kennington Karst and Sinkhole Development Standards Variance to Chapter 829, I move that we approve the variances based on findings of fact in the staff report and I do believe that practical difficulties have been met.**

Daley: I will **second**.

Kaczmarczyk: Larry, you want to call the roll?

Wilson: Yes. The vote is on petitions VAR-21-42a and VAR-21-42b, respectively, the Kennington Karst and Sinkhole Development Standards Variance to Chapter 829 and the Kennington Buildable Area 15 Percent Slope Variance to Chapter 804. A yes vote, is a vote to approve both variances, based upon the staff report with an amended finding of practical difficulties in regard to utilizing the lot. Again, a yes vote is a vote to approve based on the findings of practical difficulties both variances. Skip Daley?

Daley: Aye.

Wilson: Mary Beth Kaczmarczyk?

Kaczmarczyk: Yes.

Wilson: Vicky Sorensen?

Sorensen: Yes.

Wilson: Bernie Guerrettaz?

Guerrettaz: Yes.

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

**The motion in cases VAR-21-42a, Kennington Karst & Sinkhole Development Standards Variance to Chapter 829 and VAR-21-42b, Kennington Buildable Area (15% Slope) Variance to Chapter 804, in favor of approving the variances, with amending findings, carried unanimously (4-0).**

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**NEW BUSINESS**

- 1. VAR-21-35a** Redeemer Community Church Aisle Width Variance to Chapter 806
- 2. VAR-21-35b** Redeemer Community Church Buffer Yard Variance to Ch. 830
- 3. VAR-21-35c** Redeemer Community Church Landscaped Parking Island Variance to Ch. 830
- 4. VAR-21-35d** Redeemer Community Church Maximum Building Coverage Variance to Chapter 833  
Three (3) 0.86 +/- acre parcels in Bloomington Township, Section 31 at 111 S Kimble DR. Owner: Redeemer Community Church Of Bloomington Inc  
**Zoned RS3.5.** Contact: [rpayne@co.monroe.in.us](mailto:rpayne@co.monroe.in.us)

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

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

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**NEW BUSINESS**

**9. VAR-21-43**

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

One (1) 2.51 +/- acre parcel in Benton North Township, Section 28 at  
7467 N John Young RD. Owner: Habig, Barbara J

**Zoned AG/RR.** Contact: [tberhman@co.monroe.in.us](mailto:tberhman@co.monroe.in.us)

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

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



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**NEW BUSINESS**

**10. VAR-21-47**

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

One (1) 0.5 +/- acre parcel in Clear Creek Township, Section 29 at 9385 S Harrodsburg RD. Owner: Allen, Larry Brig & Cathy Jean

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

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

**STAFF ACTION:**

Myers: Can you hear me ok?

Kaczmarczyk: Yes.

Myers: Alright. So, this is the Allen Minimum Lot Size Variance to Chapter 804 located at 9385 South Harrodsburg Road. It is in Clear Creek Township, Section 29 and it is on a 0.5 acre parcel. A little bit of summary here, the petitioner applied for a Residential Building Permit in April of 2021 to remodel 850 square feet of the existing 956 square foot single family residence on this property. A Building Permit and an Improvement Location Permit were issued for that remodel. Then in June of 2021 the petitioner came back and applied for a second Residential Building Permit to construct a bathroom addition to the existing single family residence. That addition is approximately 144 square feet. During the Planning Department review stage Planning staff notified the petitioner that they would need to request the Minimum Lot Size Variance based upon the fact that this property is less than the 1 acre minimum lot size for its zoning district, which is Estate Residential. Other items on this of note for this petition are that it is on sewer. Here is the location map and the slope map. You will note there is steep slope in the area but the addition of the bathroom will be going into the south east corner of the residence on the property. Here are some site photographs. The driveway cut on South Harrodsburg Road. Next slide. Here is the home, the front of it and then the back where the proposed bathroom addition will go. You can see that cut out in the ground there. Other pictures of the property, just a few more angles of where the bathroom addition will go. This picture on the left is the existing detached garage that is on this property. It is referenced in the site plan as well and then just right adjacent to it is a separate property that has some structures on it. It is unknown to the Planning Department what the structures for the other property are used for or just this existing detached garage. It is most likely storage for the current owners. Alright, so here we have the letter to the Board of Zoning Appeals from the petitioner as well as the confirmation that this property is on sewer. Here is the site plan. Here is another one on the next page but you will note the garage and then also their proposed addition of the bathroom to that south east section of the house. Alright, so overall Planning staff recommends approval of the Minimum Lot Size Variance to Chapter 804, citing that any new development or expansion on the property would first require a Minimum Lot Size Variance, based upon its current lot size. I will now take any questions.

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<b>CASE NUMBER</b>	<b>DETAIL</b>	<b>RECOMMENDED MOTION</b>
VAR-21-47	Minimum Lot Size Chapter 804	Approval

812-6 Standards for Design Standards Variance Approval: In order to approve an application for a design standards variance, the Board must find favorable findings for all three (3) criteria, A, B, and C, listed after the agenda within the BZA packet.

***Recommended Motion Conditions or Reasoning:***

Approve; any new development/construction on this property would first require a minimum lot size variance.

**QUESTIONS FOR STAFF – VAR-21-47 - Allen**

Kaczmarczyk: Does the Board have any questions for Drew? Seeing none. Is the petitioner here and would they like to speak?

**PETITIONER/PETITIONER’S REPRESENTATIVE – VAR-21-47 – Allen**

McAulley: Jason McAulley present on behalf of the petitioner.

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

McAulley: I do.

Kaczmarczyk: Go ahead and proceed sir.

McAulley: I welcome any Board questions. There is actually nothing. Drew did a fantastic job.

Kaczmarczyk: Alright, thank you. Does the Board have questions for Mr. McAulley?

Guerrettaz: I don't.

Kaczmarczyk: Ok. Is there anyone else here that would like to speak on behalf of this petition? Anyone here that would like to speak in opposition to this petition? Seeing. One of the Board members like to make a motion, please?

**SUPPORTERS – VAR-21-47 – Allen: None**

**FURTHER SUPPORTERS – VAR-21-47 – Allen: None**

**REMONSTRATORS - VAR-21-47 – Allen: None**

**ADDITIONAL QUESTIONS FOR STAFF – VAR-21-47 – Allen: None**

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**FURTHER QUESTIONS FOR STAFF – VAR-21-47 - Allen**

Sorensen: I can. **In case number VAR-21-47, at 9385 South Harrodsburg Road, I recommend, I move to approve the Minimum Lot Size Variance from Chapter 804, with the recommendation, motion, condition of any new development or expansion on this property would first request a Minimum Lot Size Variance.**

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

Guerrettaz: **Second.** Did you hear that Mary Beth?

Kaczmarczyk: Yes. Larry, you want to call roll?

Wilson: I sure will. I just wanted to make sure I was unmuted. The vote is on variance number VAR-21-47, Allen Minimum Lot Size Variance to Chapter 804 for the real estate located at 9385 South Harrodsburg Road. The motion is to approve the lot size variance based upon the findings in the staff report. Bernie Guerrettaz?

Guerrettaz: Yes.

Wilson: Skip Daley?

Daley: Aye. Sorry, technical difficulty. Aye.

Wilson: Mary Beth Kaczmarczyk?

Kaczmarczyk: Yes.

Wilson: Vicky Sorensen?

Sorensen: Yes.

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

**The motion in case VAR-21-47, Allen Minimum Lot Size Variance to Chapter 804, in favor of approving variance, with condition attached to motion, carried unanimously (4-0).**

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**REPORTS:**

**Planning/Wilson:** I don't believe I have any announcements.

**Legal/Schilling:** No report.

Kaczmarczyk: Nothing from Legal, then I move we adjourn this meeting.

Daley: Second.

Guerrettaz: Nice job staff.

Kaczmarczyk: Have a good evening. Nice to see you all and hopefully we will be together again someday.

**The meeting adjourned at 7:08 P.M.**

Sign:

Attest:

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Mary Beth Kaczmarczyk, Chairman

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Larry J. Wilson, Secretary

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