

DRAFT

**BOARD OF ZONING APPEALS
Virtual Meeting via ZOOM - Minutes
November 03, 2021 - 5:30 p.m.**

CALL TO ORDER

ROLL CALL

INTRODUCTION OF EVIDENCE

APPROVAL OF AGENDA

APPROVAL OF MINUTES: None.

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

ROLL CALL: Mary Beth Kaczmarczyk, Margaret Clements, Bernie Guerrettaz

ABSENT: Skip Daley, Vicky Sorensen

STAFF PRESENT: Larry Wilson, Director, Jackie Nester Jelen, Assistant Director, Anne Crecelius, Planner/GIS Specialist, Rebecca Payne, 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, as amended, carried unanimously

APPROVAL OF MINUTES:

No minutes to approve at this time.

DRAFT

ADMINISTRATIVE BUSINESS: None.

OLD BUSINESS:

- 1. VAR-21-53a Perry Buildable Area (15% Slope) Variance to Chapter 804**
2. VAR-21-53b 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. Owner: Perry, Mark and Clara
Zoned RE2.5. Contact: dmyers@co.monroe.in.us
*****CONTINUED BY PETITIONER*****

NEW BUSINESS:

- 1. VAR-21-57 Skirvin ECO Area 3 (18% Slope) Variance to Chapter 825**
One (1) 6.92 +/- acre parcel in Benton North Township, Section 11 at 8988 E State Road 45, parcel no. 53-06-11-200-010.000-003.
Owner: Skirvin, Tina **Zoned FR, ECO 3.**
Contact: acrecelius@co.monroe.in.us
- 2. VAR-21-59 Baxter Interior Landscaping to Chapter 833**
One (1) 29.85 +/- acre parcel in Van Buren Township, Section 01 at 617-1001 S Curry Pike, parcel no. 53-09-01-100-040.000-015.
Owner: Baxter Pharmaceutical Solu-Tions LLC
Zoned IG. Contact: rpayne@co.monroe.in.us
- 3. VAR-21-60a Taylor Minimum Lot Size to Chapter 804**
4. VAR-21-60b Taylor Minimum Lot Width to Chapter 804
One (1) 1.19 +/- acre parcel in Polk Township, Section 20 at 6400 E Allens Creek RD, parcel no. 53-12-20-200-013.000-010.
Owner: Taylor, John **Zoned FR and ECO 1.**
Contact: acrecelius@co.monroe.in.us
- 5. VAR-21-61a Dietz Front Yard Setback to Chapter 804**
6. VAR-21-61b Dietz Buildable Area (15% slope) Variance to Chapter 804
One (1) 0.55 +/- acre parcel in Benton North Township, Section 35 at 8536 N Blue Heron DR, parcel no. 53-01-35-401-024.000-003.
Owner: Paul C and Shelly L Dietz
Zoned SR. Contact: tbehrman@co.monroe.in.us
- 7. VAR-21-62 Rio Tattoo Studio Use Variance to Chapter 802**
One (1) 1.27 +/- acre parcel in Perry Township, Section 27 at 2860 E Moffett LN, parcel number 53-08-27-400-009.000-008.
Owner: Delaney, Jason
Zoned: SR and ECO 3. Contact: acrecelius@co.monroe.in.us

DRAFT

8. VAR-21-63a

Gupta Side Yard Setback Variance to Chapter 833

9. VAR-21-63b

Gupta Minimum Lot Size Variance to Chapter 833

One (1) 0.33 +/- acre parcel in Bloomington Township, Section 30 at 3791 W Woodyard RD, parcel no. 53-05-30-200-002.000-004.

Owner: Teague, Lucas

Zoned RE1. Contact dmyers@co.monroe.in.us

*****WITHDRAWN BY PETITIONER*****

10. ADR-21-3

Appeal of Director's Interpretation of Pre-Existing Business Uses at 5100 S Victor Pike.

One (1) 4.93 +/- acre parcel in Perry Township, Section 29 at 5100 S Victor Pike, parcel number 53-08-29-200-023.000-008.

Owner: P & G Associates LLC.

Zoned: PB. Contact: lwilson@co.monroe.in.us

DRAFT

OLD BUSINESS

1. VAR-21-53a

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

2. VAR-21-53b

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. Owner: Perry, Mark and Clara

Zoned RE2.5. Contact: dmyers@co.monroe.in.us

BOARD ACTION: Kaczmarczyk introduced the petition.

STAFF ACTION: Petition was continued by the petitioner.

DRAFT

NEW BUSINESS

1. VAR-21-57

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

One (1) 6.92 +/- acre parcel in Benton North Township, Section 11 at 8988 E State Road 45, parcel no. 53-06-11-200-010.000-003.

Owner: Skirvin, Tina **Zoned FR, ECO 3.**

Contact: acrecelius@co.monroe.in.us

BOARD ACTION: Kaczmarczyk introduced the petition.

STAFF ACTION:

Crececius: Thank you. Was this VAR-21-57?

Guerrettaz: Yes.

Kaczmarczyk: I'm sorry. I read the old business case number instead. My bad. Ok, let me review that. My apologies. VAR-21-57 Anne.

Crececius: Thank you, Mary Beth. This is the Skirvin Environmental Constraints Overlay Area 3, which specifically here is going to be the 18 percent slope restriction for any land disturbance request from Chapter 825. The property is located at 8988 East State Road 45, located in Benton North Township and is 6.92 acres. On the left we have a pictometry photo with an overlay of contours just to get you familiar with this site. This variance presentation is going to be pretty quick. The petitioner this variance became triggered because they submitted a Residential Accessory Structure Permit Application for a solar panel installation. We had a little back in forth and the location that they do want to install the solar panels is in an area as you can see on the right which is greater than 18 percent, so kind of in a ravine on a slope. Something to note, I am going to go back again, when we looked at our Elevate GIS just because of geospatial referencing it looks like it is off property. It is not off of the property. The boundary line is farther to the west so what we are looking at the petitioner submittals are correct. It is just our imagery is a little off. The solar panel is shown here on the left. That is just a quick diagram of what they will be installing. On the right is the petitioner's submitted plan, which shows it in proximity to the pool and the home and on the top middle is where they kind of identified the location of the area using aerial imagery as well. Overall, staff is recommending that we do approve this variance, the ECO Area 3 18 percent slope from Chapter 825, based on findings of fact, subject to the Monroe County Highway and MS4 Coordinator reports. We do not have any updates or comments necessarily from those departments but we are recommending the following conditions;

- 1) No removal of vegetation for the installation for the solar panel.

From what we can tell there is no vegetation in this area. But just as a confirmation, no removal of vegetation.

- 2) Land disturbance limited to the installation of the solar panel only.

Does anybody have any questions?

CASE NUMBER	DETAIL	RECOMMENDED MOTION
VAR-21-57	ECO Area 3 from Ch. 825	Approval with Conditions

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:

1. No removal of vegetation for the installation for the solar panel
2. Land disturbance limited to the installation of the solar panel only.

QUESTIONS FOR STAFF – VAR-21-57 - Skirvin

Kaczmarczyk: Does the Board have any questions for Anne? Ok, the plaintiff here and would they like to speak? I am sorry is the petitioner here? Is the petitioner here and would they like to speak? Mr. Law? You don't have to. Erin Lease. You have your hand up. You are on mute Erin.

Creceilius: So, I will ask Erin Lease to unmute. I am sorry. I should have sent that request. They will have to, is it *9? I think if you calling in by phone you hit *6 to unmute yourself.

Nester Jelen: Tech Services, you do have any ideas as to why Erin might not be able to unmute at this point?

Tech Services: Who?

Nester Jelen: Erin Lease? She says in the chat, they say in the chat it is not allowing me to unmute.

Kaczmarczyk: What do we do?

Tech Services: They are allowed to unmute their self.

Nester Jelen: Erin, the mute button should be in the lower left hand corner of your screen. If you are unable to unmute then if you can go ahead and put your phone number in the chat one of us will go ahead and give you a call and we will take your comment that way.

Kaczmarczyk: Did you go down to the bottom of your screen and highlight the bottom area where the video and the microphone are? There is a phone number.

Nester Jelen: Anne, are you going to call?

Creceilius: Yes, I am. Ok, I have Erin on speakerphone. Hopefully this works. Erin, go ahead.

PETITIONER/PETITIONER'S REPRESENTATIVE – VAR-21-57 – Skirvin

Lease: Can everybody hear me ok?

Kaczmarczyk: Yes, I can hear you.

DRAFT

Lease: Ok, perfect. My name is Erin and I am with Power Home Solar and I am representing the Skirvin Family. I just wanted to let you guys know that there should be between 3 and 5 metal posts driven into the ground that shouldn't affect any water runoff or anything like that and like you said I can confirm that there won't be any vegetation removed. So, we should be good to go on all of that.

Kaczmarczyk: Ok, thank you so much Erin. Does the Board have any questions for Erin? Seeing none. Would anyone like to speak on behalf of this petition? Seeing none. Is there anyone here that wishes to speak against this petition? Seeing none. Does somebody have a motion ready?

SUPPORTERS – VAR-21-57 – Skirvin: None

FURTHER SUPPORTERS- VAR-21-57 – Skirvin: None

REMONSTRATORS – VAR-21-57 – Skirvin: None

ADDITIONAL QUESTIONS FOR STAFF - VAR-21-57 – Skirvin: None

FURTHER QUESTIONS FOR STAFF – VAR-21-57 - Skirvin

Clements: I can make a motion. **In the matter of case VAR-21-57, ECO Area 3 from Chapter 825, petitioner is Bryan Law, address is 8988 East State Road 45, I move that we approve the ECO Area 3, 18 percent slope variance from Chapter 825, based on the findings of fact and subject to the Monroe County Highway and MS4 Coordinator reports and with the following conditions;**

- 1) No removal of vegetation for the installation for the solar panel.**
- 2) Land disturbance limited to the installation of the solar panel only.**

Guerrettaz: I will **second** that.

Kaczmarczyk: Call the roll, Larry.

Wilson: I will call the roll. The vote is on petition VAR-21-57, Skirvin ECO Area 3 Variance from 18 percent slope. The motion is to approve the variance based upon the findings with the development review conditions set forth in the staff report including no removal of vegetation for installation of the solar panel and land disturbance limited to installation of the solar panel only. Again, a yes vote is a vote to approve the variance with the conditions set forth. Margaret Clements?

Clements: Yes.

Wilson: Bernie Guerrettaz?

Guerrettaz: Yes.

Wilson: Mary Beth Kaczmarczyk?

DRAFT

Kaczmarczyk: Yes.

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

The motion in case VAR-21-57, Skirvin ECO Area 3 (18% Slope) Variance to Chapter 825, in favor of approving the variance, with conditions as attach to motion, carried unanimously (3-0).

DRAFT

NEW BUSINESS

3. VAR-21-59

Baxter Interior Landscaping to Chapter 833

One (1) 29.85 +/- acre parcel in Van Buren Township, Section 01 at 617-1001 S Curry Pike, parcel no. 53-09-01-100-040.000-015.

Owner: Baxter Pharmaceutical Solu-Tions LLC

Zoned IG. Contact: rpayne@co.monroe.in.us

BOARD ACTION: Kaczmarczyk introduced the petition.

STAFF ACTION:

Payne: Hi everyone. Can you all see my screen?

Kaczmarczyk: Yes.

Payne: Ok, great. This is a variance request to the design standards laid out in Chapter 830 related to landscaping and this is for one parcel that contains almost 30 acres in Van Buren Township. It is the Baxter Pharmaceutical Campus located at 617 through 1001 South Curry Pike. The petitioner submitted to the Planning Department a site plan for the addition of warehouse on their campus. The site plan did get approved. However, upon a field inspection it was noted that there was some landscaping that was required per the site plan that had not been installed and it was a deliberate thing on the side of Baxter because they are concerned about the landscaping attracting insects and pests. Where the proposed landscaping was supposed to go is nearby and entrance to one of their buildings, so essentially what that means is that the petitioner hasn't met all of the required D value of their landscaping. So, they are falling a little bit short. They have only planted 35 percent of what is required. Consequently a variance to the landscaping requirements is necessary before a Land Use Certificate can be issued. Here we have the location map and the current zoning of the parcel is General Industrial. These are photos of the location on the campus where the landscaping was supposed to be installed per the site plan. You can see here on the photo on the left is where shrubs and perennials were required. Of course at the moment it has grass and this photo on the bottom right is just another shot of the location where the landscaping was required per the site plan. The top right photo again is the location where the landscaping was required. I do want to mention at this spot you will see new trees. These are new maple trees that were planted per the site plan. Those did make it in. However, the perennials and shrubs and grasses that were called for were omitted. To get you oriented a bit, this building here is the new warehouse and that is what triggered the site plan requirement and it is this bit here in the red where we had called for these perennials and shrubs and these are what was left out of the plantings. Here you can see the 4 maple trees that I just mentioned in the previous slide. This location boxed in the red is the area that we are talking about as a whole. Like I said, it is located nearby an entrance. Baxter decided deliberately not to install these requirements based on concerns that it would attract the wrong, or attract critters. This is the letter to the Board of Zoning Appeals. Hopefully you all had a chance to read it. I think the petitioner did a really good job sort of explaining their rationale for not including the landscaping. Finally, in terms of a recommendation, Planning staff does recommend that the Landscaping Design Standards is approved based on the findings of fact and subject to the following condition;

- 1) The petitioner agree to plant the required plantings equivalent to 260D value elsewhere on the site. The petitioner must submit to staff a new landscaping plan that shows the planting

DRAFT

re-locations.
With that I will take any questions.

CASE NUMBER	DETAIL	RECOMMENDED MOTION
VAR-21-59	Interior Landscaping from Chapter 830	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 the landscaping design standards variance from Chapter 830 based on the findings of fact and subject to the following condition:

1. The petitioner agree to plant the required plantings equivalent to 260D value elsewhere on the site. The petitioner must submit to staff a new landscaping plan that shows the planting re-locations.

QUESTIONS FOR STAFF – VAR-21-59 - Baxter

Kaczmarczyk: Does the Board have any questions for Rebecca?

Clements: I have one. I just have to say that in this matter I completely agree with Baxter. I have landscaping on my property and my pest control people tell me that mulch harbors a lot of problems and I don't know why especially in a pharmaceutical clean environment like this. I also know that Kellogg and Post and other cereal companies they need to avoid exactly what it is we are trying to force them to plant in order to keep their environments clean. I just don't understand why this has come up all of a sudden and why we are making it difficult for them to operate their business where they have been operating for a long time.

Kaczmarczyk: That wasn't a question that was more of a statement.

Wilson: I would be glad to respond to that Margaret. It is a site plan requirement that they have landscaping and they have added onto building, they are remodeling the building so it is a requirement that they need to site plan approval with landscaping. It is not like we are going and imposing something that is not imposed on other businesses. The variance is based upon their need to deal with practical difficulty in their site which requires a variance from the landscaping requirement and accordingly we are recommending approval subject to location of the density to another portion of the site away from the building that would impact it.

Clements: I would like to urge us to defer to their expertise. They seem very well informed on the subject. That is my feelings about that. Thank you.

Kaczmarczyk: Is the petitioner here or the petitioner's representative?

DRAFT

Guerrettaz: Mary Beth, I have got a quick question.

Kaczmarczyk: Sorry, Bernie.

Guerrettaz: That's ok. I understand where Larry is coming from and Margaret and this is my pitch for a Hearing Officer at some point. A variance to the ordinance is necessary and a Hearing Officer might make this process a little easier. The one thing I didn't see in the petitioner's letter and Larry answered the question but so I am assuming they want the variance due to practical difficulties. Is that correct?

Kaczmarczyk: Yes.

Guerrettaz: That is all that I got.

Kaczmarczyk: Alright. Is the petitioner or the representative here and would they like to speak?

PETITIONER/PETITIONER'S REPRESENTATIVE – VAR-21-59 - Baxter

Riggert: Yes. I am Bill Riggert here to represent Baxter this evening on this particular matter. Rebecca has done a fine job presenting the information. While we were developing the plans we did not take into consideration the environmental concerns that Baxter has...

Kaczmarczyk: I'm sorry, I failed to swear you in. I was thinking you were an attorney.

Riggert: My apologies.

Kaczmarczyk: My apologies. I was thinking as a representative you might have been an attorney. My apologies. Do you swear to tell the truth and nothing but the truth?

Riggert: I do.

Kaczmarczyk: Alright. Thank you sir. You can proceed.

Riggert: Thank you. We probably should have known more about the environmental concerns that Baxter had when we developed the plans and submitted them to Planning for review and approval. At this point it would be great if we wouldn't have to do the plantings but if it is necessary we can certainly find a place on the campus to do the plantings and present that in a new landscape plan for consideration by Planning staff. I can try to address any questions you might have.

Kaczmarczyk: Does the Board have any questions for Mr. Riggert?

Guerrettaz: I have got 2 quick questions. The first one practical difficulties is that the issue here? Am I understanding that correctly?

Riggert: Yes, BG it is.

DRAFT

Guerrettaz: Ok, so has there been a plan laid out where the possible areas are for the plantings or do you guys think that it is going to be difficult to find areas where the plantings can go?

Riggert: No, we have not prepared a plan yet as a result of this and we need to do a site investigation to determine where we can get the plantings and keep them far enough away from their facility. That is something that we have not done yet. But we will do that as part of this request.

Guerrettaz: The reason why I was asking that question is because if there wasn't an area where it was feasible then there may have been room to not have done the plantings at all from the BZA standpoint but that is all that I have got. Thank you.

Riggert: Thank you.

Kaczmarczyk: Margaret, do you have any questions?

Clements: I do not.

Kaczmarczyk: Thank you sir. Is there anyone else here that would like to speak on behalf of this petition? Seeing none. Is there anyone here that would like to speak against this petition? Seeing none. Do you have a motion? Margaret?

SUPPORTERS – VAR-21-59 – Baxter: None

FURTHER SUPPORTERS- VAR-21-59 – Baxter: None

REMONSTRATORS – VAR-21-59 – Baxter: None

ADDITIONAL QUESTIONS FOR STAFF - VAR-21-59 – Baxter: None

FURTHER QUESTIONS FOR STAFF – VAR-21-59 - Baxter

Clements: **In the matter of VAR-21-59, Interior Landscaping from Chapter 830, I would like to recommend that we approve the Landscaping Design Standards Variance from Chapter 830 and also that the builder and the company and Mr. Riggert work with Plan Commission work out the details of plantings so that we don't necessarily have to come before the Plan Commission again, BZA again.**

Kaczmarczyk: I will **second** the motion. Call the roll Larry. You are on mute, Larry.

Wilson: The vote is on VAR-21-59, Baxter Interior Landscaping to Chapter 830 for the landscaping requirement. The motion is to approve the variance based upon the conditions of the staff report. Again, a yes vote is a vote to approve the variance based on practical difficulties.

Nester Jelen: Larry, can you confirm, is there a condition of approval that they do plant elsewhere or we didn't include that condition because it's optional?

DRAFT

Wilson: I think it is a condition.

Kaczmarczyk: That was a condition of approval I believe.

Clements: No, my motion was to make it more of a conversation between Planning and Baxter rather than a condition here, between Planning staff and Baxter and to not make it a formal condition as they work, this condition, this required plantings is equivalent to 260D value elsewhere on the site it may turn out that that is not workable for the plans and for the site and I would like to eliminate the requirement, just suggest that those plantings equivalent to 260D value elsewhere on this site take place.

Wilson: If it is a suggestion, they will not be obligated to do it.

Clements: Bernie, can you help me out there with how that could be worded?

Guerrettaz: Well, I am not sure I agree with you Margaret, so probably not. Here is my question. How large is the footprint of the site that we are talking about? Is this the entire Baxter property there at Curry Pike?

Payne: Well, actually...

Guerrettaz: I don't see any boundary lines on the drawing so I am assuming that is all one property.

Payne: Yes, it is and as you are probably aware this is just one building of several. What I call a campus.

Guerrettaz: So, the way that I understood staff's recommendation is that anyway on the Baxter property this D value could be achieved and that is why I asked the petitioner's representative if they have examined whether or not it is possible and I think we need, my opinion is we need to stick with staff's recommendation with the condition just because I think it puts staff in a position where they are going to be forced to decide whether or not plantings can or can't go somewhere based on something that is out of their expertise. Those are my points.

Clements: **I am going to remove my motion.** If someone else would like to make the motion that would be great.

Guerrettaz: I can make it Mary Beth.

Kaczmarczyk: Ok, thank you, Bernie.

Guerrettaz: **In the matter of VAR-21-59, this is the Baxter Interior Landscaping Variance to Chapter 830, located on Curry Pike, I move that we approve the variance from Chapter 830 based on the findings of fact and the fact that practical difficulties have been met, subject to the following condition;**

- 1) The petitioner agree to plant the required plantings equivalent to 260D value elsewhere on the site. The petitioner must submit to staff a new landscaping plan that shows the**

DRAFT

planting re-locations. That would be prior to and Occupancy Permit, Larry, is that correct?

Wilson: Yes, all Land Use Certificates.

Guerrettaz: Excuse me, **prior to a Land Use Certificate be granted.**

Kaczmarczyk: I will **second** that.

Wilson: The motion is on VAR-21-59, Baxter Variance from Interior Landscaping standards from Chapter 830. The motion is to approve the variance based upon practical difficulties but to require the petitioner to plant the require plantings equivalent to 260D value elsewhere on the entire Baxter site. The petitioner will submit to staff a new landscaping plan that shows the plantings relocations that meet the required D value. Again, the motion is to approve the variance with the condition as set forth. Mary Beth Kaczmarczyk?

Kaczmarczyk: Yes.

Wilson: Margaret Clements?

Clements: Yes.

Wilson: Bernie Guerrettaz?

Guerrettaz: Yes.

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

The motion in case VAR-21-59, Baxter Interior Landscaping to Chapter 830, in favor of approving the variance, with condition as set forth in the motion, carried unanimously (3-0).

DRAFT

NEW BUSINESS

3. VAR-21-60a

Taylor Minimum Lot Size to Chapter 804

4. VAR-21-60b

Taylor Minimum Lot Width to Chapter 804

One (1) 1.19 +/- acre parcel in Polk Township, Section 20 at 6400 E Allens Creek RD, parcel no. 53-12-20-200-013.000-010.

Owner: Taylor, John **Zoned FR and ECO 1.**

Contact: acrecelius@co.monroe.in.us

BOARD ACTION: Kaczmarczyk introduced the petition.

STAFF ACTION:

Crecelius: Thank you Mary Beth. This is one variance, two subsets of design standards requests. This is a Lot Size and also a Lot Width Variance request from Chapter 804. The property is 1.19 acres and it is located in Polk Township at 6400 East Allens Creek Road. On the left we have a pictometry photo. This is looking east at the property. There is currently a single family residence existing on the property. The petitioners have stated that the home is in disrepair and needs to be demolished. Their intent is to sell the property in the future but they would like to, I spoke with the petitioners more than a year ago about this property so their intent is to obtain these variances to make it more attractive to a potential buyer. If a buyer was to purchase the property they would face these exact same 2 variance requests if they did want to rebuild or demo the house. Potentially an interested buyer could get the property and fix the home but depending on the state, I don't think it has been technically condemned but they have stated that it should be demolished. So, that is the intent here. The property is zoned Forest Reserve which has a minimum requirement of 5 acres. A couple of site photos. The property looks at an RV park to the north. A quick little GIS analysis of existing parcels in the area that are under 5 acres. With this parcel size map I did exclude anything less than point 0.5 acres just because we did have some right of way small areas that had been dedicated to the county so they were going to show up. If you just wonder why it is 0.5 to 5 acres that is why. The areas that are residential that have been developed and are existing there are a few of them in the area that have been built out and developed as single family residences. So, this is not too unusual that this exists without being 5 acres. On the left we have the petitioner letter. I do want to note that they did mention in their letter building a detached, wanting approval for a future owner to build a detached 2-car garage. We have explained to the petitioner that we cannot approve a future structure. That structure would be approved if it met setbacks and if the property has a minimum lot size and minimum lot width. They understand that this is just those 2 variances. It is not approving any structures in the future. On the right is their existing site plan that they would like to use for a future demolition permit. So, staff is recommending approval of the Minimum Lot Size and the Minimum Lot Width, the standard variance from Chapter 804, based on the findings of fact and subject to the Monroe County Highway and MS4 Coordinator reports. Does anybody have any questions?

CASE NUMBER	DETAIL	RECOMMENDED MOTION
VAR-21-60	Minimum Lot Size from Ch. 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.

DRAFT

QUESTIONS FOR STAFF – VAR-21-60a & VAR-21-60b – Taylor

Kaczmarczyk: Does the Board have any questions for Anne? No, ok. Is the petitioner here and would they like to speak? Mr. Taylor?

**PETITIONER/PETITIONER'S REPRESENTATIVE –
VAR-21-60a & VAR-21-60b - Taylor**

Taylor: I am here and I really have nothing to add to other than the fact that we have spent an excessive amount of time trying to correct the areas...

Kaczmarczyk: Actually, if you are going to actually speak I will need to swear you in Mr. Taylor. Do you swear to tell the truth and nothing but the truth?

Taylor: Yes I do.

Kaczmarczyk: Ok, thank you. Go ahead, I'm sorry.

Taylor: I just want to say that we are just trying to improve the area of the property and we have cleaned up a lot at this point. That home if we were able to remove it would be a better position for the neighborhood as well as the campground across the street. That is all that I have.

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

Nester Jelen: Mary Beth it looks like Todd is wanting to speak in favor.

Kaczmarczyk: I am sorry. I missed that Todd. Can you unmute yourself?

SUPPORTERS – VAR-21-60a & VAR-21-60b – Taylor

Todd: Sure, thank you.

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

Todd: I do.

Kaczmarczyk: Alright, you may proceed.

Todd: In the aerial photograph that was taken facing east, I am the property owner directly to the south of Mr. Taylor's property and I would like to whole-heartedly endorse his petition. He has been a great neighbor. He has done a lot to clean up this property since he acquired it. It was a terrible eyesore for the area and I appreciate the efforts that he has gone too, to clean this property up. I would certainly like to see him be able to sell the property with the point of somebody being able to construct a home on it in the future simply because leaving this property as simply a vacant lot would do a disserve to the area. I would really look forward to a neighbor being able to purchase

DRAFT

this and build a single family home there.

Kaczmarczyk: Thank you, sir. Anyone else here that would like to speak on behalf of this petition? Ok, seeing none. Is there anyone here that would like to speak against this petition? Seeing none. Does someone have a motion ready?

FURTHER SUPPORTERS- VAR-21-60a & VAR-21-60b – Taylor: None

REMONSTRATORS – VAR-21-60a & VAR-21-60b – Taylor: None

ADDITIONAL QUESTIONS FOR STAFF - VAR-21-60a & VAR-21-60b – Taylor: None

FURTHER QUESTIONS FOR STAFF – VAR-21-60a & VAR-21-60b - Taylor

Clements: **I move that we approve the designs standards for VAR-21-60, well I guess I don't have it completely ready, based on the findings of fact and subject to the Monroe County Highway and MS4 Coordinator reports. So, this is to approve the Minimum Lot Size and Minimum Lot Width design standards variance.**

Kaczmarczyk: I will **second** that.

Wilson: I will call the roll on VAR-21-60 both a and b. the vote will be on approving both variances, the Minimum Lot Size and the Minimum Lot Width variances respectively, a and b, design standards variance from 804, based upon the finding of fact and subject to the Monroe County Highway and MS4 Coordinator reports. Again, a vote in favor is a vote to approve both variances. Margaret Clements?

Clements: Yes.

Wilson: Bernie Guerrettaz?

Guerrettaz: Yes.

Wilson: Mary Beth Kaczmarczyk?

Kaczmarczyk: Yes.

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

The motion in case VAR-21-60a, Taylor Minimum Lot Size to Chapter 804 and VAR-21-60b, Taylor Minimum Lot Width to Chapter 804, in favor of approving the variances, carried unanimously (3-0).

DRAFT

NEW BUSINESS

5. VAR-21-61a

Dietz Front Yard Setback to Chapter 804

6. VAR-21-61b

Dietz Buildable Area (15% slope) Variance to Chapter 804

One (1) 0.55 +/- acre parcel in Benton North Township, Section 35 at 8536 N Blue Heron DR, parcel no. 53-01-35-401-024.000-003.

Owner: Paul C and Shelly L Dietz

Zoned SR. Contact: tbehrman@co.monroe.in.us

BOARD ACTION: Kaczmarczyk introduced the petition.

STAFF ACTION:

Nester Jelen: Tammy is actually not here tonight so Larry and I are actually going to go over this one together. This is the Dietz Front Yard Setback and the Dietz Buildable Area Variances to Chapter 804 and the property is located at 8536 North Blue Heron Drive. The zoning for this property is Suburban Residential. The petitioner is requesting 2 design standards variances for 15 percent slope as well as the front yard setback. As you will note in the packet, this is not the first time that they have received or requested a variance to the front yard setback. This request in particular is to allow for an additional to a single family residence. They are requesting a 980 square foot footprint 2-story addition for a total of 1,470 square foot addition to the home. The buildable area requirements state that structures should be located on slopes less than 15 percent. The proposed location of this addition exceeds slopes greater than 25 even 35 percent slope. Staff was unable to issue a waiver when this residential permit came through so this is why they are here tonight for asking for a variance. The front yard setback is 25' from right of way and the home encroaches currently 7.66' into the setback. The addition although it is on the backside of the home brings into play the home that is pre-existing nonconforming. The home is currently on a septic. The Health Department has no record of the septic and I believe that the petitioner was unwilling to share a permit with us before this variance but it would be potentially required before the ILP could be issued. If a variance is approved, the permit request for R-21-771 could be issued. Again, the history on this site, they were granted a Front Setback on May 7, 2014 and that was in order to add a detached garage. Discussion from the minutes included that the slopes on this lot were a supporting factor for allowing that variance and that it was quoted, "there's probably not anywhere on this lot outside of the setback that you could actually place a structure on." There is a location here, a very eastern, north eastern portion of the county. As you can tell there are some slopes on this property and it is currently built out with a single family residence. We put together a slope map that even further shows the percent slope that we were discussing here so you can kind of even see the upper 20's, 30's and even possibly 40's percent slopes on this property. It is a dead end road here and you can kind of see the footprint of the encroachment there of the home. Here are some pictometry imagery of the property as well as some site photos. There is the garage and the home and this is the location where the addition would be located. The petitioner's representative did submit a letter to the Board of Zoning Appeals and here is the site map or site plan that we were given for the variance request. The addition would be 14 feet by 35 feet. Here is a look at the construction plans of what the addition would include and it is stated that there would be just an office space, kitchen and that there is an existing bedroom kind of off to the side, so no addition of bedrooms in this case. Staff is recommending on this one a denial for both Buildable Area as well as the Front Setback and some of the reasoning for that is that there are no practical difficulties in the current use of this site. A self-created hardship was established in 2015

DRAFT

when a detached garage was added to the property. Additional, one concern there has been no review by the Health Department to verify the septic location for the system and so we don't want the proposed addition to have any conflicts with the separation distances or anything like that. Larry, would you like to add anything to this case as well?

Wilson: The only thing I will say is this is a very small lot. There is very limited space if any to place a septic system and we have no idea where it is. There is a supposed location shown on the site map but as you can see the scale is inadequate to really interpret any type of septic tank for finger system. Again, this is a 60-70 year old house and we have no record that the septic system has ever been updated. We just can't basically make a recommendation of approval if we don't know where the infrastructure on the site is and that it is functioning to allow additional square footage to be built on the house.

CASE NUMBER	DETAIL	RECOMMENDED MOTION
VAR-21-61a	Buildable Area (15% slope) Chapter 804	Denial
VAR-21-61b	Front Yard Setback Chapter 804	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:

Deny the front setback variance and the buildable area variances. There are no practical difficulties in the current use of the site. A self-created hardship was established in 2015 when a detached garage was added to the property. Additionally, there has been no review by the Health Department to verify the septic location for the system built with the 1950's home.

QUESTIONS FOR STAFF – VAR-21-61a & VAR-21-61b - Dietz

Kaczmarczyk: Ok, does the Board have any questions for Larry or Jackie?

Guerrettaz: I have got 1 maybe 2 questions. One, Jackie could you go, I know where the garage was added, more of an aerial view, yeah, the garage, more of an aerial view. Can you show me the 2 locations? There is a screened porch and then additional living quarters being added at 490 square feet each. Is that correct?

Nester Jelen: Yes. It is being added to the back side.

Guerrettaz: Ok, so the entire 980 square feet are being added to the back side of the lake on the lake frontage.

Nester Jelen: Correct.

Guerrettaz: My first reaction is with the garage I don't necessarily consider that as a self-created hardship. I understand where staff is coming from. It is a flat spot that they decided to put the garage on instead of maybe additional living quarters. But I think from the lake standpoint and just

DRAFT

from having a garage I think I think that is a reasonable build to have a garage with your home. Am I correct that was the variance that was done before, Jackie? The garage up by the road?

Nester Jelen: Yes, Bernie.

Guerrettaz: Ok. I am leaning kind of toward staff and not getting in an area where we have to, if it doesn't require that a septic system be located and looked at with the building permit process then I am not so sure that I feel comfortable asking for that other just like Jackie said if we grant the variance if it gets into some of the lines coming into the house into the septic field or the septic field is somehow in the way then we would just be back here again and I would like to hear more about that from the petitioner about the septic and where it is located and why they have located it on the map where they think it is. So, that is all I have got for now. Thanks Mary Beth.

Kaczmarczyk: Margaret, do you have any questions for Jackie or Larry?

Clements: No.

Kaczmarczyk: Ok, thank you. Is Mr. McArdle here?

PETITIONER/PETITIONER'S REPRESENTATIVE – VAR-21-61a & VAR-21-61b – Dietz

McArdle: Yes. I am here. Can everyone hear me?

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

McArdle: Yes.

Kaczmarczyk: Ok, sir go ahead.

McArdle: Well the (inaudible) exits the house and it is out of our way. I believe if you are looking at the whole site plan it would be to the right of the house. It goes out that right wall and up that ridge to the tank and field. So, we know where it is but we don't have any record of when it was put in but the fact that we are not adding, we took a bedroom off of this in the pre-design stage so that the septic would not be an issue. I agree with Mr. Guerrettaz that the garage setback, I really don't think it has any bearing on what we are trying to do here. We are basically adding a kitchen to the back of this house. As far as the septic goes if you want to require us to have it located, to do any kind of verification, we are happy to do that. But I don't really see how that has any effect on whether or not we add. We are not adding any bedrooms. We are not adding a sink anywhere. Everything is as is where it is. We are not adding another toilet or anything like that.

Guerrettaz: Is, sorry Mary Beth.

Kaczmarczyk: No, go ahead Bernie.

Guerrettaz: Well, I am wondering is that a foundation that you are pouring or what is the, how are you building the additions?

DRAFT

McArdle: It would be in essence a basement, a poured basement walls and then the walkout wall that faces the lake can be a framed wall because it will be out of the ground but the sidewalls will be poured concrete and then whatever loadbearing points there. There may be 2 posts underneath as well and it is just an unfinished basement to put his utilities, the heating/cooling equipment, etcetera.

Guerrettaz: Explain the and maybe you did and I just missed it but explain the porch to me.

McArdle: The porch?

Guerrettaz: The screened porch. Isn't that being added as well? The 490 foot addition and then a screened in porch for 490 feet.

McArdle: No, there is no screened in porch. It is just a deck. It is going to be a room addition the length of the house, coming out 14', or the width of the house, going back 14' and then a deck off of that. I am not sure what the, we may be confusing the deck with the screened porch and there is no screened porch.

Nester Jelen: Dave can you confirm that this deck would have to be removed in order to accommodate the addition?

McArdle: Oh, yes that has to go.

Wilson: What is the total distance of the deck in addition to the addition?

McArdle: 14 and 14, 28' out to the outside edge of the deck.

Wilson: So, you would be going 28' into the setback or into the lakeside.

McArdle: Correct. The deck could be also if we had to build it similar to the one that is there now we could set posts at 12' if you wanted to keep us back, put posts at 12' instead of 14'. I don't if that matters to you or not. It is negotiable all of it.

Guerrettaz: Right and just so the public is clear I understand the petition, I thought I read screened in porch but it was deck, so excuse me, just to be clear. So, the existing deck will be removed, an addition will go on and a deck of 490' would be put on the lake side of the home. Correct?

McArdle: Correct. Basically that deck line is getting moved out toward the lake 14'.

Guerrettaz: The existing septic service, the actual lines coming out of the home, could you put the plat, a survey up there again Jackie, make sure I get my directions right, so it comes off of, I will just say for the purposes of directions of that drawing it comes out to the east on that short side of the home and then goes out so that is why you don't think any of the pipes or the plumbing that are coming out of the house will...

McArdle: No, I can tell it is gravity fed system and I can tell where it exits the house and that is

DRAFT

all that I could physically tell and I know where the tank is. But that is all that I can tell you for sure because we would have to dig it up to get any evidence of it.

Guerrettaz: Right.

McArdle: I am not positive on how old that house is. I don't think it was 50's but I know the owner is here if that is pertinent. We could ask him.

Guerrettaz: I don't need to know anything else about that. I guess, I will just say it on these cases, it is 0.55 acres and it looks like there are several hundred feet or over one hundred feet between the build and the lake and I just kind of lean toward a person if a person can augment their home and still live there, I want to hear from anybody in the area that remonstrators but we can contain some of this I think. That is all that I have got. I am just thinking out loud Mary Beth. I apologize.

McArdle: Mary Beth, if I could add just downhill of the new deck we are going to clear some trees so the ground would go from just wooded floor of the yard to sod. So we are improving the potential runoff of the site by that alone so I feel like we can do this and improve the site even better from everyone's standpoint.

Guerrettaz: Mary Beth can I ask one more question? Is the deck going to be posts as the ones that we are looking at now?

McArdle: Basically, yes.

Guerrettaz: Ok, well, yes or no.

McArdle: Yes.

Kaczmarczyk: Any further questions for Mr. McArdle? Is there anyone else here that would...

Nester Jelen: Margaret, sorry, Margaret has her hand raised.

Kaczmarczyk: I'm sorry Margaret.

Clements: That's ok. I think when we come back to discuss it among ourselves then that will be when I raise my question or discussion.

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

Dietz: Hi, this is Paul and Shelly and this is our house. Can I say something?

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

Dietz: Yes.

DRAFT

Kaczmarczyk: Alright, yes, go ahead sir.

Dietz: Thanks for having us. You can see on this one picture here or maybe it is the other one here, this little spot down here is the crawl space where all of the mechanicals are under there. So, my hot water heater, my furnace, everything that needs to be serviced, I have to crawl under there. There is a 3 foot door and inside it is about 4 feet tall. When I bought the place in 1996 we bought it and it was new and now it is 25 years later and for me to get under there is difficult. So, I am trying to make the kitchen to where the end of this deck is and then take the deck up to where it was before. The house is small, our family growing and we are getting older and it is really difficult for us. So, that is the main reason for this. Really we are not adding a bedroom. We tried to but you guys denied that. We are not adding a bathroom. We are not adding a sink. I do know where the septic system is and this work is nowhere near where that is. I appreciate you giving us the time. We have owned the place for 25 years. It is time for us to expand and make it better and we just really need your help.

Kaczmarczyk: Does the Board have any questions for Paul? No, ok. Is there anyone else here that would like to speak on behalf of this petition?

Nester Jelen: Mary Beth, can I just clarify that if the petitioner does wish to put a bedroom or keep the bedroom in the footprint under their residential permit they can do so it just involves the septic system which I am not sure that they have the permit for or they have record of it.

Guerrettaz: Jackie, could you repeat that? Are you saying that in this addition if they would add a bathroom or pardon me, or add a bedroom then it would go under the umbrella of an inspection by the Monroe County Health Department?

Nester Jelen: If they are adding a bedroom then it does trigger the Chapter 365, which is the Health code which does involve either a septic inspection or if there is no record of the permit in some cases it involves an installation of a new system.

Guerrettaz: Right. I think you stated it better than me added a bedroom. I said in the addition but actually anywhere within the dwelling or in the garage if they added a bedroom. Thank you for that Jackie.

McArdle: Can I add one more thing, please? This is a question for Paul and Shelly the owners. Could you repeat how old the house is?

Dietz: Well, we bought it in 1996 brand new and it was from the floor up all brand new construction.

McArdle: We can probably assume that it is not that old of a house that it has got a very good septic field. I mean, I know we have no proof but it is not that old.

Dietz: If you can go to the other picture where and you show me where you drew the lines for the septic I will show you it is. May it is a different picture. Ok, so there is a walkway that goes down to the lake. We have a cleanout right here and all of our pipes come out this way and then down

DRAFT

the path. Reeds Septic put it in. They have been there. It comes down. Yeah, go back. Go back a picture. I will show you where it is.

Nester Jelen: We aren't able to see the mouse on your screen so I have to show where it is and I don't know if I quite understand where you are saying.

Dietz: Back one picture. There it is. So, if you see this pathway. So, you can see in this picture the septic comes out to the left of the home and goes down the field. So, all of this work that we are trying to do behind the house has nothing to do with a septic system and this is a weekend place for us we live in Indianapolis. We are there on the weekends. This is not a heavy use in the summer place but it needs some work. It is 25 years old since we bought it and we are just trying to make our kitchen bigger and we get the rules. We wanted a new bedroom and you said no so we get that. But all that we are trying to do is make the kitchen bigger which then makes the deck a little bit bigger. I appreciate your time.

Kaczmarczyk: Thank you.

Wilson: Mr. Dietz, you mentioned that you know the contractor who put the septic tank in.

Dietz: Yes, it is Reed Septic. They put it in and we called them when we bought the place in '96 and said we wanted it inspected and they came out and they dug the hole and it was perfect. They come back on occasion and it has never been pumped because we just aren't there that often and they said it is in perfect working condition. We did put the cleanout just a couple of years ago to make it easier and that guys says it is in great shape. So, it has not been a problem. In addition to that we are 450' from the water. We are not 100' from the water. We are 150 yards from the water. We are way up. We are not trying to get our property on the waterfront. We are just trying to make our kitchen bigger. I know I said that before.

Kaczmarczyk: Thank you sir.

Dietz: This is far. If you guys come over for a barbeque, it's a hike.

Kaczmarczyk: Ok. Thank you sir. Does the Board have any more questions for Mr. McArdle or Dietz? No. Is there anyone else here that would like to speak on behalf of this petition? Is there anyone here that wishes to speak against this petition? Seeing none. Does one of my fellow Board members have a motion ready?

SUPPORTERS – VAR-21-61a & VAR-21-61b – Dietz: None

FURTHER SUPPORTERS – VAR-21-61a & VAR-21-61b – Dietz: None

REMONSTRATORS - VAR-21-61a & VAR-21-61b – Dietz: None

ADDITIONAL QUESTIONS FOR STAFF – VAR-21-61a & VAR-21-61b – Dietz

Clements: I would like an opportunity now to discuss this.

DRAFT

Kaczmarczyk: Yes.

Clements: During the discussion really the slope requirements have nothing to do with the distance to the lake and whether or not, it may seem like we are trying to prevent you from enjoying your property but one of the statements that was made by Mr. McArdle was that vegetation was going to be removed and sod put down and those are exactly our concerns is the disturbance of the soil because of erosion problems that might then develop. That is why we have these requirements that prevent people from building on slopes greater than 18 percent. I don't think we addressed during the discussion the removal of any vegetation. That is not really permitted is it, Mr. Wilson?

Wilson: Actually the provision against land disturbance and removal of vegetation is only in the ECO zones. This is a buildable area requirement of 15 percent slope but I will note that the reason we came up with the 15 percent slope standard is because the maximum slope in which a septic tank can be located in Indiana is 15 percent slope. So, that is one of the concerns that we have with the existing septic tank is that it is on steep slopes and again if there is, if the variance is approved I would suggest the Dietz's contact the contractor that put in the septic system to make sure there was a permit or at least some kind of site drawings or so on which show there is an adequate finger system in addition to a tank to actually treat the fluent. Even though it is being used as a weekend house now a lot of these house are being converted to year-round residences, so we do have a concern in the long-term to protect the water quality of the lake that every house has a working and viable septic system.

Kaczmarczyk: Thank you Larry.

Guerrettaz: Jackie can I see, sorry, sorry, Mary Beth or Margaret, I didn't meant to interrupt you. Can I see the slope map again? Ok. Again, my take on most of these and I think I have been pretty consistent is there is an existing home there that in my opinion that people live and breathe with and they grow in they grow out. It seems like they do understand the fact that the restriction that adding a bedroom is going to require more hardship on their septic system than what is there now. The distance to the land from the disturbance to me does matter because I think ultimately the erosion we are trying to protect the waterways, so I think we can manage that. We have done that before. The fact that it is a 490 square foot living addition, you know they are going to add, displace the deck, I don't know what the existing square footage of the deck is now but that is kind of a displaced distance or displaced area not a new area because there is already deck at the bottom. Now there are going to be posts set for the new deck that are going to be closer to the lake but the addition to the hard surface area so to speak to probably more like 600' instead of the 980. I am leaning toward putting conditions that we can live with that can be under the county's purview but I don't know that I am ready to get into this to this septic question or not because they are not adding a bedroom and for obvious reasons I think. So, I mean, again, if somebody has got a home and they just want to live and breathe work within it and work without it, the petitioner's statement of being about to get to the mechanical areas and work within the home and not just sell it or get rid of it, not appreciate coming down and enjoying Lake Lemon, to me those are valid points. I am leaning towards a motion of approval with some conditions and I am not trying to sway Mary Beth or Margaret, I am just trying to discuss it out loud.

Kaczmarczyk: Do you want to go ahead and make that motion, Bernie?

DRAFT

FURTHER QUESTIONS FOR STAFF – VAR-21-61a & VAR-21-61b - Dietz

Guerrettaz: Yes, I can. Thanks Mary Beth. **In the matter of VAR-21-61a and VAR-21-61b, Dietz Front Yard Setback to Chapter 804 and Dietz Buildable Area, 15 Percent Slope Variance to Chapter 804, this is at 8536 Blue Heron Drive, I move approval on both variances, based on practical difficulties, based on the staff report, the findings of fact and with the conditions that;**

- 1) A site plan and an erosion control plan by an Indiana licensed Land Surveyor or Engineer be prepared and approved by staff and the MS4 Operator. That does not include inspection on the septic field.**
- 2) All disturbed areas show on the site plan and erosion control plan be re-laid with sod prior to the Occupancy Permit such that the erosion can be mitigated and not rely on just seed for the revegetation where the disturbance may occur.**

Kaczmarczyk: Ok, is anybody seconding this motion?

Clements: I'm sorry I don't think I am on this one.

Kaczmarczyk: Ok, **motion dies for lack of a second.** That's correct, right? Ok. Margaret, do you have a motion, you would like to make?

Clements: I don't.

Guerrettaz: Margaret if I am thinking about the amount of disturbance between the lake and the additions just to confirm what the petitioner stated, if I added that the disturbance for the deck addition be by post and not by an excavated foundation wall. Does that help?

Clements: The problem that I am having is that we have these restrictions for a reason and it seems like we are not adhering to them, that people see a structure and they think well, they like the structure but they would like to add onto it and then encroach on the area that is not to be encroached upon. I just see the temptation is there all over the county to build on slopes that should not be built upon and I am having a hard time with it.

Guerrettaz: And I agree with that. I see the Dietz's are people that have lived there is '96 and a lot of these requirements have changed since '96. Like I said before I am not trying to talk anybody into I am just trying to be clear on my rationale because I don't want to see this house built and you know. The alternate might be that they build somewhere else that is on a smaller lot that is closer to the lake, etcetera, etcetera but the rules have changed since they bought this place. If they had just bought it last year and had come and said, you know what we live there we decided we need to add on, that is a little bit of a different story. Again, they are just trying to live within the house that they have and adjust to the rules as best they can. That's I mean I got my motion.

Clements: I would like to ask Mary Beth how you are thinking about it.

Kaczmarczyk: I tend to agree with you Margaret. These rules are here for a reason and yeah, I tend to agree with Margaret on this one. What do we do? Do we continue this so we have more Board

DRAFT

members or what do we do?

Wilson: I would make a suggestion since it appears that we are not going to have a majority vote either way, it has to be unanimous, that the Board just move to continue it to the next meeting. That will give the Dietz's more time to provide more evidence in regard to a location of the septic tank and try to address those concerns that have been expressed and they can come up with construction plans that can show how the disturbance of the soil will be handled. But again, all 3 of you have to approve or deny variance for it to be concluded tonight. So, I would suggest that perhaps the way it sounds that a continuance to the next meeting would be appropriate.

Guerrettaz: Ok, I can do that. I think that is sound advice, Larry.

Kaczmarczyk: Yes.

Guerrettaz: Sorry to jump in Mary Beth.

Kaczmarczyk: That's ok, go ahead and make a motion or I will.

Guerrettaz: We are both task masters on keeping the meeting going. **In regard to VAR-21-61a and VAR-21-61b, I move that we continue this petition to the next BZA meeting, which is in December.** Do we need a date for that Larry?

Clements: You are muted.

Nester Jelen: December 1st.

Guerrettaz: **December 1, 2021 regularly scheduled Board of Zoning Appeals Meeting.**

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

Wilson: I did have the December 1st date if I hadn't have been muted and I would have jumped ahead of Jackie. Again, the motion is to continue VAR-21-61a and VAR-21-61b to the December 1st meeting of the BZA. A vote in favor is a vote for continuance. At that time we hope to have 4 or 5 members so we will be able to get a majority vote one way or the other. Margaret Clements?

Clements: Yes.

Wilson: Bernie Guerrettaz?

Guerrettaz: Yes.

Wilson: Mary Beth Kaczmarczyk?

Kaczmarczyk: Yes.

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

DRAFT

The motion in cases VAR-21-61a, Dietz Front Yard Setback to Chapter 804 and VAR-21-61b, Dietz Buildable Area (15% slope) Variance to Chapter 804, in favor of continuing the case to the December 1, 2021 BZA Meeting, carried unanimously (3-0).

DRAFT

NEW BUSINESS

7. VAR-21-62

Rio Tattoo Studio Use Variance to Chapter 802

One (1) 1.27 +/- acre parcel in Perry Township, Section 27 at 2860 E Moffett LN, parcel number 53-08-27-400-009.000-008.

Owner: Delaney, Jason

Zoned: SR and ECO 3. Contact: acrecelius@co.monroe.in.us

BOARD ACTION: Kaczmarczyk introduced the petition.

STAFF ACTION:

Nester Jelen: Mary Beth, Larry and I are also going to tag team this one a little bit just because it is a Use Variance. Anne is also welcome to jump in and Larry as well but I will go ahead and introduce it. This is Use Variance for a Tattoo Studio. The location of the property is at 2860 East Moffett Lane. It is 1.27 acres and the property currently contains a single family residence. It is zoned Suburban Residential and ECO 3. The request is for a Use Variance to allow for a Tattoo Studio. The Tattoo Studio use is currently not permitted in any zoning district according to the zoning ordinance. So, that is the reasoning behind the Use Variance request. Just a reminder to the Board of Zoning Appeals members the standards for approving a Use Variance are different than the standards for approving a design standards variance and we get so few of these per year that we just want to make sure that it is clear that standards of which you are making a recommendation and doing the review. You will see on the screen that according to 812-5, the Board must find that and then you A-E on the screen. What we are going to be talking mostly about tonight is D, which is 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. The definition for unnecessary hardship located in the zoning ordinance as well is that there is a result of significant economic injury that arises from the strict application of this ordinance to the conditions of a particular, existing parcel of property, effectively deprived the parcel owner of all reasonable economic use of the parcel and is clearly more significant than compliance cost or practical difficulties. So, these all three have to be true in order to constitute an unnecessary hardship. These are the permitted uses in the Suburban Residential zoning district. The single family residential use is highlighted in yellow because there is an existing and usable, being used single family residence on the lot. The petitioner has submitted and an Exhibit 2, a letter. In the packet you will also find a little bit of background of the petitioner's request to the Planning Department. On the right side you will see that the property zoning map here is Suburban Residential and there is neighboring Suburban Residential zoned properties as well, as well as a Pre-Existing Business lot across the street. Here is an aerial of the property. There was a recent expansion of the home within the last few years and it did involve an upgrade of the septic system. The petitioner's request for the Use variance would utilize the existing single family residence as stated in Exhibit 2, the petitioner letter. Although we do not, Monroe County Ordinance does not have a definition or a use Tattoo Studio, we did look around to other ordinances and found that the City of Bloomington actually does have a Tattoo use and they do have somewhat of a definition. But they are able to only allow in zones that are Mixed-Use, including the Downtown Corridor or Medium Scale and none of the residential zones. The Indiana State Board of Health also regulates Tattoo and Body Piercings. The recommendation by staff for this variance request for a Use Variance is to deny the Use Variance, based on the findings of fact and primarily because there is no substantial evidence that the property cannot be utilized under one of the permitted low intensity used listed in the SR zoning district, mainly the single

DRAFT

family residential use and therefore does not meet the criteria under Chapter 812. So, I will take any questions that the Board may have. Larry do you want to add anything to this or Anne?

Wilson: I do not.

Kaczmarczyk: Anne, anything to add?

Nester Jelen: She may have stepped away for just a second but I will include her in as well.

Kaczmarczyk: She was muted.

Crecelius: No, I have nothing to add.

CASE NUMBER	DETAIL	RECOMMENDED MOTION
VAR-21-62	Use Variance to allow Tattoo Studio	Denial

812-5 Standards for Use Variance Approval: In order to approve an application for a design standards variance, the Board must find favorable findings for all five (5) criteria, A, B, C, D, and E listed after the agenda within the BZA packet.

In order to approve 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;*
- 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;*
- C. the need for the variance arises 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,*
- 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 Improvements*
 - 5. Distinguish Land from Property*

Hardship or Unnecessary Hardship. Significant economic injury that: (A) Arises from the strict application of this ordinance to the conditions of a particular, existing parcel of property; (B) Effectively deprived the parcel owner of all reasonable economic use of the parcel; and (C) Is clearly more significant than compliance cost or practical difficulties.

Recommended Motion Conditions or Reasoning:

Deny the use variance (Tattoo Studio) to Chapter 802 based on the findings of fact. There is no substantial evidence the property cannot be utilized under one of the permitted low intensity uses listed in the SR zoning district, and therefore does not meet criteria 812-5(D).

PROPOSED FINDINGS OF FACT
Use Variance from Chapter 802

Use Variance from Chapter 802

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;

Finding:

- Approval of the Use Variance would allow for a use that is not currently permitted in the Monroe County Zoning Ordinance and for which conditions and design standards do not exist.
- Accordingly, the approval could be injurious to the public health, safety, and general welfare of the community;

B. the use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner;

Findings:

- See Findings under (A);
- The effect of the approval of the Use Variance on property values is difficult to determine;
- The neighboring uses on E Moffett are residential in nature;
- The establishment of Tattoo Studio and the resulting customer traffic could affect the area adjacent to the property in an adverse manner.

C. the need for the variance arises from some condition peculiar to the property involved;

Findings:

- The property meets the zoning standards for the Suburban Residential (SR) Zoning District. The property is currently used as a single family residence, which is a permitted use in the SR zoning district. No evidence was submitted by petitioner that the need for the use variance arises 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:

- Unnecessary hardship is defined as “*Significant economic injury that:*

(A) Arises from the strict application of this ordinance to the conditions of a particular,

DRAFT

existing parcel of property;

(B) Effectively deprived the parcel owner of all reasonable economic use of the parcel; and

(C) Is clearly more significant than compliance cost or practical difficulties.”

- The property has been and is currently used as a single family residence and therefore an unnecessary hardship does not exist. Since the property can and is being used as a single family residence, the terms of the ordinance does **not** effectively deprive the parcel owner of all reasonable economic use of the parcel.

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

Residential Choices

Focused Development in Designated Communities

Environmental Protection

Planned Infrastructure Improvements

Distinguish Land from Property

Findings:

- The Comprehensive Plan Phase I has this area as MCUA Suburban Residential. The Comprehensive Plan states the Suburban Residential area includes “existing low-density single-family subdivisions and isolated multi-family apartment complexes.” Permitting a commercial use within an existing residential area does interfere substantially with the Comprehensive Plan.

QUESTIONS FOR STAFF – VAR-21-62 – Rio Tattoo

Kaczmarczyk: Does the Board have any questions for Jackie?

Guerrettaz: Yes, I am sorry Mary Beth. I have just got I think a couple. Jackie, thanks for discussing the use question. So, this is, this will be a home based business. Am I understanding that properly?

Kaczmarczyk: Yes.

Nester Jelen: Actually this would its own use if permitted. Our Home Based Business and Home Occupation standards, let me go back to the list of permitted uses in SR. Home Occupation is only permitted but not Home Based Business. Larry, do you want to talk a little bit about the history of the site?

DRAFT

Wilson: As Jackie said, a Home Based Business is not a permitted use in the SR zone. Only Home Occupation and Home Occupation, Mr. Rio did submit a request for a Use Determination as to his use being the Home Occupation. We determined it was not a Home Occupation primarily due to the amount of customer visitation occurring on this site. It would be open for appointments 6 hours a day with people visiting the site and we felt that customers coming to a site in a residential zone on a daily basis was inconsistent with the definition of Suburban Residential. We typically see Home Occupation with no interaction with the public at all. Occasionally, it will be drop-offs. Primarily we have had some Gunsmiths Home Occupations recently where people will occasionally will drop by maybe one or two or three times a month drop by something to have it worked on or do it by mail. We have other home occupations that are totally without any contact from people coming on site. The primary concern the Home Occupation was not approved was that there would be customers coming to the site on a daily basis based upon the submitted request for a Use Determination.

Guerrettaz: Ok, that was helpful and just so I am clear you gave that background because the Home Occupation was an initial discussion staff had with the petitioner. But the Home Occupation is not currently what we are reviewing. Is that correct?

Wilson: It is a Use Variance to utilize a residential site as a Tattoo Studio. We do not have a Tattoo Use in any district in our ordinance.

Kaczmarczyk: I have a question. A beauty salon would that be permitted in a place like this?

Wilson: In fact I used, since we did not have a Tattoo Use, Tattoo Studio Use in our ordinance in the Use Determination I termed it was similar to a barber shop or beauty salon and neither of those would meet the criteria because they have customers coming to and from the house on an ongoing basis.

Kaczmarczyk: Thank you Larry. Any further questions for staff?

Guerrettaz: Yes, I do. Another question. The petitioner may or does own this house, I am trying to understand if basically we are talking about a personal services business in the neighborhood. Is that a fair statement?

Wilson: Yes, I am not sure how we would classify it. We would call it personal services. Barber shop and beauty salon are basically personal services in our zoning ordinance.

Guerrettaz: Ok, ok, thanks. I am done Mary Beth. I will wait to hear from everybody else now.

Kaczmarczyk: You are fine. Any questions from you Margaret?

Clements: I don't have any questions. I am concerned about the traffic that's all.

Kaczmarczyk: Well, let's talk to the petitioner. Is the petitioner here and would they like to speak?

DRAFT

PETITIONER/PETITIONER'S REPRESENTATIVE – VAR-21-62 – Rio Tattoo

Rio: I am here.

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

Rio: I do.

Kaczmarczyk: Alright. Thank you sir. State your name, please.

Rio: John Rio.

Kaczmarczyk: John, you may proceed.

Rio: Ok, the traffic say for a barber shop, you got to cut a lot of hair to make any money and with tattooing all I need is to tattoo a couple of people a day. So, there is not going to be any walk-in business. There is no reason for anybody to just stop in. That is why I wanted to do it in my home is to stop that kind of stuff. I like working on a more personal level and with fewer people and less distractions. So, the traffic is not even going to be what my neighbors even have when they have neighbors.

Kaczmarczyk: I think he answered your question Margaret. Is there anything else you would like to tell us John?

Rio: I don't think so. I am not changing anything about the property. There is no way to even tell there is even a business here. Just very private is what I was looking for in a studio.

Kaczmarczyk: That property has been recently remodeled, has it not?

Rio: Correct.

Kaczmarczyk: It suffered a fire a while back.

Rio: Right.

Kaczmarczyk: And a garage and a lovely new driveway put in it. I drive by it every day, well, not every day anymore. I used to drive by it every day and when I go to town I drive by it. But yes, they have done a lot of work on that home. So, the studio would be around back of the building?

Rio: Correct.

Kaczmarczyk: And there is parking out behind there I assume.

Rio: Yes.

Kaczmarczyk: Does anybody have any questions for Mr. Rio? Margaret?

DRAFT

Clements: No.

Kaczmarczyk: Ok. Is there anyone else here that wishes to speak on behalf of this petition? I am not seeing anybody. Is anyone here that wishes to speak against this petition? I am not seeing anybody. At this point are we ready for a motion? Margaret or Bernie?

SUPPORTERS – VAR-21-62 – Rio Tattoo: None

FURTHER SUPPORTERS – VAR-21-62 – Rio Tattoo: None

REMONSTRATORS - VAR-21-62 – Rio Tattoo: None

ADDITIONAL QUESTIONS FOR STAFF – VAR-21-62 – Rio Tattoo: None

FURTHER QUESTIONS FOR STAFF – VAR-21-62 – Rio Tattoo

Clements: **With regard to VAR-21-62, I move that we deny the Use Variance for a Tattoo Studio to Chapter 802, based on the findings of fact. There is really not substantial evidence that the property cannot be utilized under one of the permitted low intensity uses listed in the SR zoning district, so it does not meet the criteria of 812-5.**

Kaczmarczyk: Are you going to second this Bernie or are we going to end of continuing this one too?

Guerrettaz: I will **second** it.

Kaczmarczyk: Call the roll Larry?

Wilson: I will call the roll on VAR-21-62, which is the Rio Tattoo Studio Use Variance to Chapter 802 for the property located at 2860 East Moffett Lane. Owner Jason Delaney. Again, the motion is to deny the Use Variance based upon the findings of fact that there is no substantial evidence presented that the property cannot be utilized under one of the permitted low intensity uses listed in the SR zoning district and therefore does not meet the criteria set forth in 812-5-D, which is also the statute of the criteria set forth by Indiana code. Again, a yes vote is a vote to deny the Use Variance. Again, we need to have unanimous vote to deny or approve any items on tonight's agenda. Bernie Guerrettaz?

Guerrettaz: Yes.

Wilson: Mary Beth Kaczmarczyk?

Kaczmarczyk: Yes.

Wilson: Margaret Clements?

Clements: Yes.

DRAFT

Wilson: The Use Variance is denied.

The motion in case VAR-21-62, Rio Tattoo Studio Use Variance to Chapter 802, in favor of *denying* the Use Variance, carried unanimously (3-0).

DRAFT

NEW BUSINESS

8. VAR-21-63a

Gupta Side Yard Setback Variance to Chapter 833

9. VAR-21-63b

Gupta Minimum Lot Size Variance to Chapter 833

One (1) 0.33 +/- acre parcel in Bloomington Township, Section 30 at 3791 W Woodyard RD, parcel no. 53-05-30-200-002.000-004.

Owner: Teague, Lucas

Zoned RE1. Contact dmyers@co.monroe.in.us

BOARD ACTION: Kaczmarczyk introduced the petition.

STAFF ACTION: Petition was withdrawn by the petitioner.

DRAFT

NEW BUSINESS

10. ADR-21-3

Appeal of Director's Interpretation of Pre-Existing Business Uses at 5100 S Victor Pike.

One (1) 4.93 +/- acre parcel in Perry Township, Section 29 at 5100 S Victor Pike, parcel number 53-08-29-200-023.000-008.

Owner: P & G Associates LLC.

Zoned: PB. Contact: lwilson@co.monroe.in.us

BOARD ACTION: Kaczmarczyk introduced the petition.

STAFF ACTION:

Wilson: This is an appeal of a Use Determination I made in regard to the Pre-Existing Business Uses at 5100 South Victor Pike. That is the location of a gasoline station. It is on roughly a 5 acre site adjacent to Indiana 37. The current owner is P & G Associates, LLC. There is the location. The property was zoned Limited Business and the records show that the gas station was actually constructed somewhere in the early 90's it appears and began operating approximately 1991 and 1992 as far as I can tell from the records. At the time I will say the property was located under the 1986 zoning ordinance which is not something I think we have heard a lot about but the 1986 zoning ordinance zoned the property as Limited Business. The Limited Business zone was designed to allow certain Limited Businesses that would be appropriate adjacent to residential areas. If we can go on down. You can see the location in red. I will note too that we have had some other cases involving the sites across the road in regard to variances. In 1997 when the zoning ordinance was updated the Limited Business was changed from Limited Business to Pre-Existing Use. Basically, the Board has the power to hear and determine appeals from any order, requirement, decision, or determination made by the Planning Director, a staff member or administrative officer. Anything we do as a Planning Department an individual can bring that decision whether it is a permit denial, whether it is interpretation to the Board of Zoning Appeals and the Board of Zoning Appeals has the power either to affirm or revert fully or partially any determination made by either the Administrator or any member of the staff.

Nester Jelen: Larry, would you like me to share some of the exhibits from BZA report that went out?

Wilson: That would be great. The map she is currently showing is really what I used to start the analysis of this. This is the 1986 zoning map, which you will see zoned the property as Limited Business. What I looked at was the question was what was approved at the time at least from our viewpoint, the question was what the approved use for the site? As far as I can tell the uses that were permitted under the zoning ordinance was a Gasoline Station with an Accessory Parking Lot to the gasoline station. The Use Determination, Mr. Carmin filed a Use Determination basically asking that we determine that the pre-existing use for the property was a Truck Stop. He submitted affidavits from 2 prior owners in regard to the Truck Stop use. Those affidavits are in the packet. In summary the determination that I made was that the only uses that were permitted under the ordinance was a Gasoline Station and a Parking Lot and any other use that took place on the site was not in compliance with the ordinance, therefore no rights were created by the fact that non permitted uses took place on the site. I think that is all that I have right now. I may reserve some

DRAFT

time for rebuttal as they say to Mr. Carmin's presentation. But I think we should let him go ahead and say why they disagree with the analysis that I made.

RECOMMENDED MOTION

To affirm the Administrator's Determination.

QUESTIONS FOR STAFF – ADR-21-3 – Victor Pike Appeal

Kaczmarczyk: Does anybody have any questions for Larry? No. Mr. Carmin. Just so the public is aware, I do not need to swear Mr. Carmin in because he is a lawyer.

Wilson: That rule just doesn't make sense, does it?

Kaczmarczyk: Never did to me either but I try to make sure and abide by it.

PETITIONER/PETITIONER'S REPRESENTATIVE – ADR-21-3 – Victor Pike Appeal

Carmin: Good evening. For the record, I need to note an objection. You have very specific rules of procedure adopted by the BZA and what we have just gone through violates those rules. Larry should not have been speaking. That is not what the rules allow. It does not allow him to make rebuttal at a later time and I would hope as we go through this that we are going to adhere to the rules that you have adopted. It did allow for, it calls for the Chairmen to read the initial staff report or to have it read. It did not call for an evidentially presentation by the Director, the person who made the decision that is under appeal. But let's go onto the petitioner's, the appellants, standpoint. According to Beverly Terry, this business use started in 1988, whether she is off a year or not I don't know, that was her sworn statement. Her affidavit is in the packet that was submitted. She based on that she and her husband really in his name, bought the property in 1987 and she thought it was the next year that they got the business underway. It was her husband's idea to get on the west side in the Bloomington community. There was no fuel stations for diesel fuel. It was his ideal to create a truck stop and I would note that that is a bit of a concern to use the work Truck Stop because it is getting misused. A Truck Stop in 1987 and 1988 has no relationship to the Truck Stop Travel Plaza as defined in the ordinance, the current county zoning ordinance by definition that was adopted in 2016 and it does a lot of things that this Truck Stop doesn't do, never do, doesn't intend to can can't do, from lodging to shower facilities. It is a whole different issue. So, I am a little concerned that we throw around the term Truck Stop because the Planning Director, Mr. Wilson has continued in meetings and even in this write up on this identify and compare this use to the Travel Plaza Truck Stop in the 2016 ordinance and this has absolutely no relationship to that. I am going to submit that is an inappropriate comparison. But back to the petition. When Alan Terry started this out there he had as part of his business model to encourage fuel sales and sales to the convenience store they had there, according to Mrs. Terry's sworn statement they sold a variety of things, some food items, they had a small kitchen so they had something of an indoor restaurant, they had sort of workwear related things and convenience items. But to promote those sales and promote the fuel sales he openly catered and solicited truck parking, overnight parking. They could get off the road, sleep there. They would fuel up. Buy some food in the morning when they got started and be on their way and it was part of this business model. That use has continued for nearly 30 years, for more than 30 years, depending on whether they started in '88, or '90 or '91, it's 30 years plus or minus. Because it has continues uninterrupted and unabated. After Mr.

DRAFT

Terry sold the business and the property a few years later it was purchased by Sunmart Investments. You have in your packet a sworn statement by Bill Thomas one of the partners in Sunmart Investments that describes their continuation of the use including and specifically the overnight truck driver parking. The initially continue to have business model of encouraging that parking because of what it added in terms of sales, fuel and items in the convenience store. It is difficult to believe that the county has been blissfully unaware of this use for more than 30 years and if it's not a permitted use as Mr. Wilson's Use Determination would assert then for 30 years this has been an open and obvious and very public use that was wrongful and it has been allowed to continue for 30 plus years. That is not logical. Back to the use itself, the request for the Use Determination specifically identified the different types of uses on the property that have been in existence and continue and I believe are authorized under Pre-Existing Business zoning that is on this property. This was zoned by the county in 1996 as Pre-Existing Business and that is important. I would submit that under the 1986 ordinance everything exactly what we are talking about and the issue that is most important I think too on the use determination with the temporary overnight parking accommodating customers that that is in fact authorized under the 1986 zoning ordinance. The zoning ordinance is in your packet. It is the Table of Uses in the 1986 ordinance is on pages 92 and 93 of the packet. When you look at the Table of Uses you find under Business Uses and permitted uses in the LB zone which is what Mr. Wilson reports this was zoned, you find the Gasoline Station, you find Gasoline Service Station, you find Grocery Store including the sales of hardware, sundries, bait, etcetera, you find Public Parking, which is going to be an interesting issue for you examine the definition. It is set out in the Director's packet, specifically reporting it and that is available and we will get to that in a moment. But you find on the list of uses on permitted uses in the LB zone on page 93 of your packet that it lists Public Parking Area, Parking Area Public or Employee. So, let's go back to the definitions. The response by the Planning Director to the Appeal quotes from 2 different ordinances about Public Parking. No ordinance is relevant on this issue except the 1986 ordinance. The use came into existence under the 1986 ordinance, not no later ordinance, not to 1996, not to 2016. It is the 1986 ordinance that was in place when this use started and that is the only place that you can go for a definition in terms of looking at the Table of Uses. You can see they have put up on the screen those pages. You can see the Table of Uses. But if you go back to the definitional section in the ordinance it defines the Public Parking Area and what you find is that includes, it makes the reference to more than 4 automobiles, in section 802, I will try to move up to that, I will get to that in a second, I appreciate it to whoever is handling the screen. Section 802 on the definitions when you get to the parking definition. Thank you. I will give them a chance to do that I guess. I think it is page 81, if I have it right. There we go, one more up. So, we have Parking and we have Parking Area Public and we see it says an area other than the street and we are not talking about the street we are talking about the lot. Temporary parking, which is exactly what we are talking about, temporary truck parking for more than 4 automobiles available for public use whether for free, for compensation or is an accommodation for clients or customers. This is parking as an accommodation to customers. It is part of the business model. So, in the Director's response to the Appeal, he made a statement that this definition expressly excludes Truck Parking and it does not. It does not. There is nothing there that says that. In fact, it would appear that the argument from the Director is that the reference to 4 automobiles means that automobile is the exclusive to allow parking. If that is correct, which I submit that it is not, but if that were correct then that means no vans, no quarter ton pickup trucks, no half ton pickup trucks, no SUV's, nothing but a sedan could be parked there, no other automobile. That is not what the Public Parking Area is. If you go back to the Use Table, you are not going to find anything there,

you will find no attempt to regulate Truck Parking. There is no truck use in the table uses except for truck freight terminal, which has nothing to do with what we are talking about. There is no truck parking area. If you taking the Director' interpretation of the ordinance, frankly truck parking was not allowed any place in Monroe County jurisdiction in 1986 because it is not listed as a use any place and if it doesn't qualify under this Public Parking then it is not allowed any place, which again makes no sense. But if you read the definition and take if for exactly what it says, it is for parking for more than 4 automobiles and parking to accommodate customers, temporary and that is exactly the use. I would submit that the proper Use Determination would find that the Overnight Truck Parking for drivers that is encouragement for fuel sales and sales through the convenience mart was in fact an accommodation for customers and is a permitted use. But that aside in 1996 the county blessed this use. It adopted the Pre-Existing Business use and we need to look at. I have also set in verbatim in the materials both in the appeal and in the Use Determination in the response that the Pre-Existing definition in 1996 as we acknowledge you can see and everybody agrees that is the zone on this property at this time, we can read that. Pre-Existing Business defines that which is primarily intended to accommodate commercial and business services that were in operation prior to the adoption of the zoning ordinance. This is 1996. So, the importance is those commercial business service uses in operation prior to 1996 at the time of the adoption of the zoning ordinance. The truck parking was a business service in use at the time of the Pre-Existing Business zoning was adopted and put on this property. This ordinance blessed and authorized the continuation of that. Now what you have to read into this if you want to take the Use Determination submitted by the Director is you have to read into this language that is not there. You have to read into this commercial and business service uses that were in operation prior to the adoption of the zoning ordinance and that were lawfully in use or lawfully established and it does not say that. It says that were in operation. They could have restricted it to those that were properly or lawfully in use. That's the issue from the Use Determination by Mr. Wilson that rules that Truck Parking wasn't established as a lawful use and he said that repeatedly so that appears to be the issue. There is nothing in the Pre-Existing Business zone that includes that qualification and if you read that, the whole definition there it is an extremely broad, extremely liberal expansion of existing uses. Those that were in existence at the time. Look at what it goes onto say, that it is the intent of the PB zone to identify locations of commercial activity that are not supported by the Comprehensive Plan. Well, that sounds like what Mr. Wilson is saying. Truck Parking wasn't supported. It wasn't a permitted use. Even those that were not supported but where they continued to exist. This district is identified for the purposes of maintaining commercial activities with business zoning while at the same time not allowing the expansion of new business activity. We are not talking about new business activities. We are talking about continuing an existing business use that had already developed while at the same time not allowing for the expansion of new business and activity proximate to the location of the district. The expansion of the business is permitted throughout the lot of record, very broad. What we are doing we could do it any place in the entire parcel. It can be expanded throughout the lot of record. The type of business may change to one of equal or lower intensity. So, we are not even limited to what we are doing, anything of equal intensity. This is an extremely broad, pro-business, pro-commercial activity. In 1996 the county said whatever you are doing if you are doing it now you can continue. The Use Determination declaring Truck Parking, Temporary Truck Parking the accommodations to customers is not permitted in fact not only did 1988, 1986 ordinance allow it this definition of Pre-Existing Business that is on the zone now would allow it. I would submit that the Appeal should be granted. The Use Determination issued by Mr. Wilson, the Planning Director should be overturned and the Board should find that

DRAFT

the Overnight Truck Parking and actually the set of related uses were in fact permitted both in 1986 ordinance and permitted by the Pre-Existing Business and under either one of those allows it to continue and the proper Use Determination should be that the Overnight Temporary Truck Parking is a permitted use on the property. I would ask you to vacate the Use Determination and enter a proper Use Determination. Thank you.

QUESTIONS - ADR-21-3 – Victor Pike Appeal

Kaczmarczyk: Does anyone on the Board have questions for Mr. Carmin?

Guerrettaz: Yes, quick question. Interesting point about what a Truck Stop may have been at one time and what, and I will use the words because I don't take exception to have Larry is phrasing that, and what a Truck Stop may be now. Can the petitioner expand on that and why that is relevant to point out the modernization maybe? I think I understood your train of thought there, why it matters.

Carmin: Actually I don't think it does. Because Truck Stop was not even defined in the 1986 ordinance.

Guerrettaz: Ok, that is all that I needed. You brought it up and I didn't understand why you brought it up so I just wanted to understand why it mattered and I think you said it didn't. I wasn't swayed on way or the other. I am not going to get into the points of whether we were out of order with the way the Planning Director started it, I didn't take exception to the way that he, to the way Mr. Wilson presented and I am not swayed either way by the way that we started the meeting. So, that is all that I have got for now.

Kaczmarczyk: Margaret, do you have any questions for Mr. Carmin?

Clements: I do not.

Kaczmarczyk: Ok. Is there anyone here that would like to speak on behalf of this petition? Not seeing anyone. Is there anyone here that would like to speak against this petition?

SUPPORTERS – ADR-21-3 – Victor Pike Appeal: None

FURTHER SUPPORTERS – ADR-21-3 – Victor Pike Appeal: None

REMONSTRATORS - ADR-21-3 – Victor Pike Appeal

Cassady: I don't have the ability to raise my hand on my screen.

Kaczmarczyk: Ok. Who is this?

Cassady: This is Tamby Michael Cassady.

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

DRAFT

Cassady: Yes.

Kaczmarczyk: Ok, you can go ahead. We will get to you in just a moment Jeff.

Cassady: Ok, so I would like to say a few words about some of what I recall about this property becoming a gas station because I grew up a house and half away from it and my parents owned their property from 1962 until 2004, which was a few years after my dad passed away. My mom moved away and the gas station was actually one of those reasons. It was always one of those things that come unexpectedly and surprisily but was allowed and people get a lot of use out of it at the gas station and convenient mart. But the truck issue they consistently over the years if you look at some of those overhead photographs you can see where they expanded more parking, more parking, more parking. There is one of those overhead views and I apologize I don't remember what page it is on because I reviewed the packet when it first came out and I have been trying to help my tenant with a hot water heater this evening so I was just lucky to be on board here but I am just going to speak to I mean, it just keeps getting bigger and bigger and when is it going to stop. I mean, there is one of your overhead views there that shows the dirt where they added more on the north east part of the property. I remember when they did that because I had moved back to a house, my home close by and you can see the clay dirt in that picture. That one right there on the screen. You can see the clay dirt where they added to a steep incline there so that they could provide parking for more, larger vehicles. I wonder if they ever got permitted to do that or if they just did it to expand it. I had a conversation with my mom about this a few weeks ago but like I said she moved away from there since 2004. She sold her home and the neighbor sold their homes and they are rentals. So how many rentals really care? The farm house across the road, the old farm house back in the 80's had a fire and it was vacant for years and then rented for years again. So, it is kind of like now people really do care about what use to happen there and it just seems that the truck thing just keeps expanding and literally my mom sat a cup out by her front porch in a 24 hour period to see how much dust accumulated and it was quite ridiculous. She went up to the owners at the time and turned it upside down because she was really upset about it. I don't know. I just wanted to make those comments as to what is going to continue to expand with this thing when the highway went in. There is actually a pond underneath to the south west across Victor Pike and there are underground streams that come up and down. One of them is right in front of what used to be the Marshall's house. I don't know what environmentalists have been done as a result of what happens from there going out but I do understand they have had the use for a while. It is useful as a gas station. It is useful as a convenient mart. But it has just become more and more of an annoyance. They had some really nice growth of evergreen trees growing and they cut them down and so then they put in some new lights and I think that is kind of what brought all of this to everyone's attention was that people that live right across from it are being blasted by brighter LED's and no buffer of trees to go along with that, nice thick trees that hide the light. So, that is all that I have to say. Thank you for listening. I appreciate your time.

Kaczmarczyk: Does the Board have any questions for Tamby?

Clements: I would just like to thank her for her historical perspective and for showing up tonight.

Kaczmarczyk: Thank you, Tamby.

DRAFT

Cassady: Thank you.

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

Morris: I do.

Kaczmarczyk: State your name for the record.

Morris: My name is Geoff Morris.

Kaczmarczyk: Ok, go ahead.

Morris: My family and I live across the street from the gas station and I want to start by saying we support the use of the gas station that the Planning Department state are permitted. However, we do not support overnight parking. We moved into our house in 2017 and made many trips to the area before moving in. one of our biggest concerns about buying the house was having a gas station across the street. However, in our many trips by even in talking to the person working the late evening shift at the gas station it was clear that it was quiet in the overnight hours. At the time there was even much room to park, 4 trucks to park near the property adjacent to houses. However, as Tamby mentioned a second ago in 2019 after 1-69 was completed through Monroe County we started noticing large amounts of fill being brought in and being dumped along the eastern edge of the property. In looking at images from Elevate there is bear dirt in that same area even in 2016. However, it wasn't until 2019 that it was to the fill point where gravel laid over the top and a much larger parking area was created. It was becoming a nightly occurrence to hear semi's idling all night long. It was not uncommon to see an excess of 30 trucks parked throughout the lot. It became normal for us to be woken up multiple time throughout the night because of vibrations from idling trucks or refrigeration units on trucks cycling on and off on beeping from trucking backing into parking spots. We rarely heard traffic from State Road 37 inside our house but the frequency of the idling trucks overnight causes our house to vibrate. In looking at the packet tonight it is clear to me that truck parking was never a permitted use. I have talked to 2 neighbors who have lived in their houses at the time the gas station was built. They both told me they were assured it was not going to be a truck stop. It should not be permitted tonight just because it has always been happening. This would be rewarding decades of zoning violations and set a bad precedent for the entire county. In addition this would mitigate the reason why we have zoning in the first place. The letters in the packet confirming past activity are all from people with past financial interest in the business and only confirm truck parking has been occurring for decades. This site is zoned Pre-Existing Business and that designation covers intensity. In looking at the satellite images in the packet it undeniable that the parking area and intensity has greatly increased since the 90's. A few unoccupied trucks parking in the parking lot is one thing but an excess of 30 parking in the same lot is completely different. In addition the images overtime are all from the daytime. There are no photos to indicate how many vehicles were actually parking there in the overnight hours. Just between 2017 and 2019, the number increased drastically. In addition this area specifically addressed in the 2010 Monroe County Corridor Plan, that plan states that because of character and intensity of existing residential and business developments, the County has reviewed this issue and specifically recommends that trucks stops and fueling stations not be developed at this location. I want to close by again saying that I support the permitted uses of the gas station. I appreciate the

DRAFT

convenience of having it right across the street. But there needs to be limitations placed out of respect for the concerns of neighbors. Thank you for allowing me to speak tonight to express some of my concerns as a neighbor.

Kaczmarczyk: Thank you Mr. Morris. Does any of the Board have questions for Mr. Morris? I believe somebody else had their hand up just a moment ago. Where did they go? Is there anyone else there that wishes to speak against this petition?

Busch: Yes, I would. My name is Patty Busch.

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

Busch: I do.

Kaczmarczyk: Alright, thank you Patty.

Busch: My name is Patty Busch and I live within 300 yards of P & G Associates. I oppose this petition because of the proposed extended time parking and overnight parking for tractor trailer rigs. The diesel exhaust from idling trucks is noxious. Idling of motor vehicles contributes to global warming and is linked to asthma, decreased lung function, cardiac disease, cancer and other serious health problems. A study by the Alternative Fuel Data Center found that an idling semi-truck would burn approximately 6.5 gallons of diesel fuel during an 8 hour period. A gallon of burned diesel fuel omits about 22 pounds of carbon dioxide. 1 minute of idling put more carbon dioxide into the air than smoking 3 packs of cigarettes. The tonnage of carbon dioxide, nitrogen oxides, and particulate matter omitted into the environment by heavy duty truck idling during rest periods is staggering. The petitioners propose no idling signage on their site. This will be exceedingly difficult to enforce for the following reasons. Number one; limited onsite staff to enforce this policy. Number two; extreme hot and cold weather conditions requiring idling to heat or cool the cab. Number three; idling keeps engines warm, prevents diesel fuel from thickening as temps get cold and can prevent difficult start-ups. Number four; idling ensures the alternator keeps the battery charged. Number five; idling overnight costs nothing to the non-owner/operators. We have been lead to believe that tractor trailers drivers have no other options near Bloomington and I-69 to stop and rest. That is not true. August 16th I spoke to Shelby at Walmart Headquarters about Walmart Store 1991 on West State Road 45. They allow semi-tractor trailers to park on their lot and Joey, a manager at Sams Club also located on West State Road 45, said parking is allowed on their lower lot for a period of up to 24 hours at one time. I support the operation of convenience store and gas station. It provides a valuable service to the community. However, I am opposed to overnight truck parking for the reasons mentioned above. Thank you for your time.

Kaczmarczyk: Patty, I have a question for you. Did you say how long you have lived there?

Busch: We have lived on this property since 1999 and I frequented this property since 1985.

Kaczmarczyk: And what were your experiences as far as trucks parking overnight when you first moved in?

DRAFT

Busch: Very few and I used to visit the community and store more frequently then. I can say it isn't a documented area but as far as odors go they have been much worse. The smell of diesel particularly when the air is stagnant is very recognizable and obvious in morning times and evening times when the air is still. If it is really hot or if it is really cold. For example, this morning. There was a skunk killed on Church Lane but what I could smell was the diesel at 9:30. I timed it. So, that is all that I have to say about that.

Kaczmarczyk: Ok, does any of the other Board members have questions for Patty?

Guerrettaz: Mary Beth, would you repeat the question that you asked Mrs. Busch?

Kaczmarczyk: I asked her how long she had lived there and I asked her what her experience there when they were first in the area was with the overnight parking.

Guerrettaz: Ok, Mrs. Busch, your answer was that you didn't experience seeing many trucks parking overnight there?

Busch: That's correct. When we moved in, in 1999 and I used to frequent the convenience store more at that time than I do now, it was not obvious it was a "truck stop".

Kaczmarczyk: Thank you, Patty. Natalie, I believe you are next. Do you swear to tell the truth and nothing but the truth?

Blais: I do.

Kaczmarczyk: State your name for the record.

Blais: Natalie Blais. My husband and I own the property just south of there behind the Morris' home since 2001. They have been there for only a handful of years. We have actually been there for 20. As to your question of others neighbors throughout the area, we are closer than Patty and Dave Busch. They are at 1250 West Church Lane. We are at 1250 West Old Capital Pike. Unlike them, the wind must blow in their direction because we have been across from the gas station for 20 years and have not had issues. We have had issues with the air quality coming from the septic plant but once have we ever felt the need to file a complaint against the gas station because we simply have not had any issues. I'm sorry. My add to that is our neighbors, the Morris' at the farm, we knew what we were buying when we bought the property south of the gas station, we knew that there were trucks present day and night and we knew the traffic consistence. We knew the major issues revolving around accidents at the intersections when there no lights before there was a blinker light, before there was a traffic light, before 69 and never once did we have issues or complaints with any smell coming from the gas station. I can here j-break in the middle of the night when I am sleeping but again I knew what I was buying when I bought that property. To insist that there is smell coming from that and that like trumps over the septic plant I think is just ridiculous coming from our neighbors. Our concerns coming from this appeal is that we are actually for the gas station, for the local community, for the local business that is trying to provide a service for people that serve us. You know, the trucks coming in and out they serve us. They are proving all of the goods that you and I need whether it is toilet paper or drinking water.

DRAFT

Those are the people that do that. When we had this discussion however long ago it was I brought up the fact that these truckers were lined up along the corridor just one exit down on I-69 because I happen to travel that every day. It's all about us and not about them. It's all about us and not about them and this is this continuing conversation that everybody keeps having. You want everything for you but not for the general population and I had a specific conversation with my neighbors who are the most recent owners in the neighborhood and Ericka Morris said to me specifically, we know what we bought. We know what is across the road. We know the businesses behind us and we are ok. We want this farm and we want to live and grow with this farm and yet here we are. My argument to all of this is somebody brought it up earlier about how, it was Mike Carmin, I am sorry, it was their attorney who said how could you not know for 30 years what was going on at this particular station and I would like to concur with that. Because how could you not know. All of this is happening because it is what happens around a gas station and yet all of these folks who are sitting here complaining or arguing or speaking of their concerns, which they are obviously allowed to have but where have they been for the last 30 years. I have been at this location for 20. I had an issue at the neighbor's house regarding gun shooting into a berm 10 years ago so. I spoke up. I spoke to the county and I got those issues addressed. My question is where were these neighbors that smell gas fumes that are just choking them to death where were they then? So, here we are another issue that was brought up was that all of the photos that are in this example are all during the day. So, if there are no photos during the night how can you reasonably argue that the nighttime is worse? Now, truckers I am sure they need a place to stay. But you can't argue an actual complaint if there are no photos to support your judgement. Now, I know our neighbors do tend to walk up there in the middle of the night 2-3 am and take photos because they want to argue their opinions but this particular argument is not shown in these issues. I am not trying to be disagreeable. I am not trying to argue that maybe my neighbors might smell some fumes once in a while but I think their arguments are grossly overstated and I think this is an attack onto neighbors who are really trying to provide a service to our neighborhood that is growing despite my neighbors concerns growth is happening and I think turning this down is just wrong. That is my argument.

Kaczmarczyk: Ok, thank you so much. Does the Board have any questions? No, alright. Does anyone else here wish to speak against the petition?

Rogers: I would like to speak for the petition, please.

Kaczmarczyk: Ok, and who is this?

Rogers: My name is Tina Rogers.

Clements: I'm sorry. I would like to interject here Mary Beth. The time for people to speak for it has passed.

Kaczmarczyk: Yes, that is true.

Rogers: We didn't get. I was trying to unmute myself and I was re-muted.

Guerrettaz: I think that we sure, my opinion is we should allow some latitude either.

DRAFT

Kaczmarczyk: Given the technology that we are dealing with.

Guerrettaz: I think it is fair and I am really interested personally in what people have to say.

ADDITIONAL SUPPORTERS – ADR-21-3 – Victor Pike Appeal

Kaczmarczyk: And we did let the last lady speak for the petition when we were doing against the petition. Please state your name.

Rogers: My name is Tina Rogers.

Kaczmarczyk: What did you say, Margaret, I'm sorry?

Clements: Is there a time limit on the speakers?

Rogers: I will be brief. I will be very brief.

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

Rogers: I do. I have lived about a mile away from the gas station for 14 years. For 14 years myself, my family, a family of children, a 19 year old who has frequented the gas station at all hours of the night, all hours of the day for those 14 years. I do understand that there are concerns with the people who do live there. But I would like to say that I have not witnessed these amount of trucks there is a claim to be in this amount of time. Could trucks come in there and pull in when people are, you know, not there? They can and that might happen. But they have done everything in their power to regulate this to make it a safe environment where I have had no problems sending a 16 year old at night who is a female. They are welcoming. They are kind. They provide a great service to our community and some of the vehicles that they do house provide emergency services to our community, which are much needed in this time. To say no to broaden anybody's uses or to correct a use that has been in place for 30 years seems a bit odd that it seems to be a concern now and I would ask that you do appeal this decision and allow the usage. Thank you.

Kaczmarczyk: Thank you so much. Is there anyone else there that would like to speak against this petition? I am not seeing any hands up.

Nester Jelen: I do not see anyone. Just for anyone that is one the phone, I believe *6 to raise your hand, *9 to unmute. I don't see anyone Mary Beth. I just want to make sure everyone gets to say their peace. Would the Board have a recommendation of a motion?

Carmin: Excuse me, this is Mike Carmin. May I speak, please?

Kaczmarczyk: Yes. Mike.

Carmin: You have a County Attorney. I don't see him logged on but these are difficult hearings to begin with because it is the awkwardness of appealing a decision by the very people that you have normally look to for recommendations and reports and certainly makes it awkward. But you rules

DRAFT

of procedure allow a rebuttal. So, you are going to a vote now and you are not going to give me a chance for a rebuttal. I do not understand this.

Kaczmarczyk: Ok. I am sorry. Mr. Carmin, glad to hear your rebuttal.

PETITIONER REBUTTAL - ADR-21-3 – Victor Pike Appeal

Carmin: Process is where we find out due process rights on proper procedure. Maybe Bernie thinks I was being too cautiously about it but I think following proper procedure is an important act. You are a qui judicial board. You make findings of fact. You are an appellant body and there are rules that govern how you do that. This is not variance request. This is not an examination of a site plan issues and adverse impacts. This is a very narrow issue. It is an interpretation of an ordinance and that is all that it is. I bless all of the speakers. I disagree with Mrs. Busch. I disagree with Mr. Morris. I applaud the comments of Natalie Blais and lastly I lost the name here, it went off my screen, I am sorry, I can't read that but in all honesty almost nothing of any of those people had to say their views are actually relevant to your decision. Your decision is supposed to be an interpretation of the use and an interpretation of the ordinance and apply the ordinance to the use. Whether it generates smoke, dust, noise or does none of the above is actually not of consideration for you tonight. I see David Schilling on now. I will let you take your legal advice from him. But I would submit that this is an issue of examination of the use when it when in and what the ordinance says and I do not want to bore you by repeating myself so I will just refer back to the 1986 ordinance authorizes this use and it has been in place. The Pre-Existing Business zone blessed this use and it continued uninterrupted since and it should be allowed to continue uninterrupted. That is a proper interpretation of the ordinance and a proper use determination. Nothing else is frankly relevant on that point. I would ask you to ask the request earlier to vacate the Use Determination issued by the Director and make a finding that Use Determination includes that Temporary Truck Parking. Thank you.

Kaczmarczyk: Thank you Mr. Carmin. Does the Board have any questions for Mr. Carmin? No. Ok.

ADDITIONAL FOR QUESTIONS FOR STAFF – ADR-21-3 – Victor Pike Appeal

Guerrettaz: I am glad Dave jumped on because my thoughts were exactly along the lines that we rely on staff, the Planning staff for how we proceed with these meetings and having Dave on here making sure that we are doing this in a manner that is respectful to everyone and vets our the important information is important to. So, my question is Dave and I don't know if you heard the beginning of this matter but Larry started with an explanation for where his interpretation was on this Pre-Existing Business and the uses within. So, can you explain to us now, one, does Mr. Wilson have an opportunity to speak at all and make a presentation based on what his findings were is it is that we have enough documentation based on what he has written as said in the past that we shouldn't need to hear anything else? Does that make sense?

Schilling: Well, I think that your rules of procedure say that as Mike said point out that the petition is read in by the Chairman and then the petitioner presents their case. Comments are heard and then the petitioner has a reasonable time for rebuttal. So, it seems to have gone a little bit out of

DRAFT

order but I think all of the parts are there. So, you have got the petitioner and the petitioner's rebuttal and the Director presented his case as well.

Guerrettaz: Well, what I have seen over the years on this property is over the years is NR trucks at all hours of the night. I think through the Plan Commission process I think I have publicly stated that already. So, my question to you Dave is and this may be a silly question but I am going to ask it are we looking at this as a point that the Director's interpretation was wrong or that his interpretation was reasonable to come up to his conclusion? Does that make sense?

Schilling: Well, I can tell you what your obligations are and this is under the statute. It says upon appeal the Board may reverse, affirm or modify the decision appealed from. For this purpose the Board has all the powers of the official from which the appeal is taken. That type of review is none as de novo review and de novo means from the new, so the BZA must decide this case from the new that is without deference to any legal conclusions or assumptions made by the Planning Director. The BZA is acting to today as if it is the first person that is hearing this that it is the first person making the decision and I would say that I do agree with Mr. Carmin on the issue before the Board. It is not whether overnight parking of trucks is a good idea or a bad idea. The issue is whether that type of parking was allowed under the 1986 ordinance and was allowed to continue under the Pre-Existing Business use. So, those are specific ordinance interpretation issues that are based on the language of the ordinances and the facts presented.

Kaczmarczyk: Margaret any questions for Dave?

Clements: In this entire discussion we are not focusing it all on the changed nature of the trucking industry and whether or not that type of Pre-Existing Business could really have existed in the way that it has presented itself and is under review right now. I mean, our ways of life have changed so much since 1986 and the use of trucks for transport of goods across nation especially due to shipping from other countries etcetera that it seems to me that to compare what is happening in the present to what might have been happening in 1986, it is another world. Let's just be honest. So, to me I would be tending toward affirming the Director's interpretation.

Guerrettaz: I am leaning the other way because I have witnessed that site and I have seen the overnight parking and overnight truck parking. That is what we are talking about. That is why I specifically asked Mr. Carmin what that relevance was because in another 20 years it may be something else. Aside from what may happen on this property in the future or not and that's where I think we got in the weeds earlier, I believe it has had that use over the years under the Pre-Existing Business. And with the 3 of us the reason why I bring that up now is because with the 3 of us is we will not come to a conclusion this evening, it doesn't sound like. Would you agree with that Margaret?

Clements: Yes, I would agree with that, Bernie. As much as I respect your point of view and points of view even of the people who testified and Mr. Carmin and Mr. Wilson and I do respect that but I don't think I would be swayed because the nature of our life has changed and it is a different world. What existed in 1988 is completely different from what is occurring now, I would just have to say.

DRAFT

Guerrettaz: Ok, so Dave what happens?

Schilling: Well, I think it is a replay of what happened earlier. Somebody wants to make a motion to continue. It seems like that's the only viable option.

Guerrettaz: I think in a matter where we are appealing the Director's interpretation I think a 3 of 5 person BZA this evening and we have already all 3, at least 2 of us spoken our points of view, I can go ahead and make a motion, Mary Beth.

Kaczmarczyk: Sure Bernie.

Guerrettaz: I am just trying to help you keep things moving along.

Kaczmarczyk: That's fine, go ahead and make a motion, Bernie.

BZA RESPONSE – ADR-21-3 – Victor Pike Appeal

Guerrettaz: **In the matter of ADR-21-3, this is the Appeal of the Director's Interpretation of Pre-Existing Business Uses at 5100 South Victor Pike, I move that we continue this.** Do I need to continue to a specific meeting?

Schilling: Yes.

Guerrettaz: If you as legal counsel, not staff, if you would like some flexibility in if there is anything else you need to prepare or we are coming up on a month, I am just giving the option to our counsel whether or not he recommends we continue to the first or leave that open if there is other information that we need to have in front of us.

Schilling: Bernie, if you don't continue it to a date specific then they will have to re-advertise in the newspaper. I don't know if they do that as a matter of course anyway.

Guerrettaz: Ok. **In the matter of matter of ADR-21-3, this is the Appeal of the Director's Interpretation of Pre-Existing Business Uses at 5100 South Victor Pike, I move that we continue this to the December 1st regularly scheduled meeting of the Board of Zoning Appeals of Monroe County.**

Kaczmarczyk: I **second** that motion.

Wilson: The only thing I would request is that for Dave to basically review the statute and our rules to make sure that we the procedure set up precisely and so forth if possible. It is a somewhat difficult situation. We have only dealt with these a couple of times. The statute really doesn't give a lot of guidance as to what goes on here. It clearly implies that people can speak at the hearing because it is treated the same as a variance. It is included as the same procedural things from a statute standpoint as a variance, so some guidance as to the procedure when I presented the summary I only intended, all I tried to do was summarize what was in the written material. But the other problem is it is not really basically a review of my materials. It is a new determination by the

DRAFT

Board the way David describes the statute. It is not whether I used reasonable care or not or I was correct, it is basically you get to decide all over again, as I read the statute, de novo. So I have a question if its de novo does that include the presentation of evidence to the BZA? So, those are questions we will have to look up. I cannot find any case log on these Administrative Appeals. Maybe Dave has some sources. Again, I think if Mike has sources where this has been dealt with as far as establishing the procedure and what goes on, the statute again is not of much use, other than we are supposed to treat it like a variance the way the statute is set up.

Guerrettaz: Ok and my motion has been made and that is why I wanted to make sure Dave had the time he needed to make sure that we were directed in manner that was appropriate. Thanks for that Mr. Wilson.

Wilson: I will call the roll. Do we have a second to continue?

Kaczmarczyk: Yes we had a second.

Wilson: Ok, I am sorry. I will call the roll. I apologize for getting off track there. The motion is to continue ADR-21-3, a petition of P & G Associates, LLC to the December 1st meeting of the BZA. Again, a vote in favor is a vote to continue the petition. Margaret Clements?

Clements: Yes.

Wilson: Bernie Guerrettaz?

Guerrettaz?

Guerrettaz: Yes.

Wilson: Mary Beth Kaczmarczyk?

Kaczmarczyk: Yes.

Wilson: The petition is continued to December 1st.

The motion in case ADR-21-3, Appeal of Director's Interpretation of Pre-Existing Business Uses at 5100 S Victor Pike, in favor of continuing the petition to the December 1st meeting of the BZA, carried unanimously (3-0).

DRAFT

REPORTS:

Guerrettaz: Quick question on one of the earlier petitions that we continued. Did we state that as December 1st?

Wilson: We did.

Kaczmarczyk: Yes we did.

Guerrettaz: Ok. I thought I remembered saying December 3rd, just as long as we have the right meeting date.

Kaczmarczyk: We saved December 1st. Any other business we need to discuss? **I make a motion that we adjourn this meeting.**

Clements: Thank you everyone.

Wilson: Thank you.

Planning/Wilson: No report.

Legal/Schilling: No report.

The meeting adjourned at 8:06 P.M.

Sign:

Attest:

Mary Beth Kaczmarczyk, Chairman

Larry J. Wilson, Secretary

DRAFT