

**DRAFT**

**BOARD OF ZONING APPEALS  
Virtual Meeting via ZOOM - Minutes  
February 2, 2022 - 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, Vicky Sorensen, Margaret Clements, Dee Owens, Skip Daley**

***ABSENT: None***

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

**OTHERS PRESENT: David Schilling, Legal, Tech Services**

**OATH OF OFFICE – Dee Owens**

**INTRODUCTION OF EVIDENCE:**

**Larry Wilson introduced the following items into evidence:**

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

Monroe County Zoning Ordinance (as adopted and amended)

Monroe County Subdivision Control Ordinance (as adopted and amended)

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

Cases advertised and scheduled for hearing on tonight's agenda

**The motion to approve the introduction of evidence carried unanimously.**

**APPROVAL OF AGENDA:**

**Motion to approve the agenda, carried unanimously.**

**APPROVAL OF MINUTES:**

**No minutes to approve at this time.**

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### ADMINISTRATIVE BUSINESS:

#### 1. Assign Chair and Vice Chair

### OLD BUSINESS:

#### 1. VAR-21-61a

##### **Dietz Front Yard Setback to Chapter 804**

#### 2. 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](mailto:tbehrman@co.monroe.in.us)

**\*\*\*WITHDRAWN\*\*\***

### NEW BUSINESS:

#### 1. CDU-21-6

##### **Goodroad General Contractor (Rural) Condition Use**

One (1) 5.05 +/- acre parcel in Richland Township, Section 20 at 3350 N Starnes RD. Owner: Goodroad, Glenn & Ashley

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

#### 2. VAR-21-71

##### **Griggs Floodplain Compensatory Storage Variance to Chapter 808**

One (1) 0.46 +/- acre parcel in Van Buren Township, Section 12 at 4102 W Glen Oaks DR.

Owner: Griggs, Denise Lynn & Adams, Gregory Elisha II

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

#### 2. VAR-22-1a

##### **BB Profile Landscaping Variance to Chapter 830**

#### 3. VAR-22-1b

##### **BB Profile Surfacing Requirement to Chapter 806**

One (1) 9.07 +/- acre parcel in Richland Township, Section 36 at 3432 W Profile Parkway, parcel #53-04-36-100-054.005-011.

Owner: BB Profile LLC

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

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**OATH OF OFFICE**

Owens: I, Dee Owens, do solemnly swear that I will support the Constitutions of the Unites States of American and the State of Indiana and that I will faithfully and impartially perform my duties as a Monroe County Board of Zoning Appeals member according to the law and the best of my skill and ability.

Kaczmarczyk: Alright. Does that say what we need to do that there?

Wilson: Yes it does. Welcome aboard Dee.

Kaczmarczyk: Welcome aboard.

Owens: Thanks Larry. Thanks Mary.

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**ADMINISTRATIVE BUSINESS:**

**1. Assign Chair and Vice Chair**

**CHAIR of BOARD of ZONING APPEALS**

**Clements: I would like to nominate Mary Beth Kaczmarczyk to continue as Chair of the Board of Zoning Appeals.**

Sorensen: I will **second**.

Wilson: I will call the roll on the vote for the Chairman. The motion was to nominate Mary Beth Kaczmarczyk to be the Chairman of the Board of Zoning Appeals. Again, a vote in favor is a vote to name her as the 2022 Chairman. Skip Daley?

Daley: Yes.

Wilson: Mary Beth Kaczmarczyk?

Kaczmarczyk: Sure, I will serve again.

Wilson: Vicky Sorensen?

Sorensen: Yes.

Wilson: Margaret Clements?

Clements: Yes

Wilson: Dee Owens?

Owens: Yes.

Wilson: The vote is 5 to 0 to name Mary Beth Kaczmarczyk Chairman for 2022 of the BZA. Congratulations.

**Motion to nominate Mary Beth Kaczmarczyk to be the Chairman of the Board of Zoning Appeals, carried unanimously (5-0).**

**VICE CHAIR of BOARD of ZONING APPEALS**

**Kaczmarczyk: I nominate Margaret Clements for Vice Chair.**

Sorensen: **Second**.

Wilson: There is a motion and a second to nominate Margaret Clements as Vice Chair of the BZA

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for 2022. Again a vote in favor is a vote to name Margaret Clements as Vice President for the 2022 term of the Board of Zoning of Zoning Appeals. Mary Beth Kaczmarczyk?

Kaczmarczyk: Yes.

Wilson: Vicky Sorensen?

Sorensen: Yes.

Wilson: Margaret Clements?

Clements: Yes.

Wilson: Dee Owens?

Owens: Yes.

Wilson: Skip Daley?

Daley: Yes.

Wilson: 5 to 0 vote. Margaret Clements is named Vice President for 2022.

**Motion to nominate Margaret Clements to be the Vice Chair of the Board of Zoning Appeals, carried unanimously (5-0).**

Kaczmarczyk: By the way Margaret, you will get to the take the meeting next month as I will be out. What day does it fall on? Do we know for March?

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

Kaczmarczyk: Yes. I will be out of town, out of the country, actually.

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**OLD BUSINESS:**

**1. VAR-21-61a      Dietz Front Yard Setback to Chapter 804**

**2. VAR-21-61b      Dietz Buildable Area (15% slope) Variance to Chapter 804**

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

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

**STAFF ACTION:** Petition has been **WITHDRAW**.

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### NEW BUSINESS

#### 1. CDU-21-6

#### **Goodroad General Contractor (Rural) Condition Use**

One (1) 5.05 +/- acre parcel in Richland Township, Section 20 at  
3350 N Starnes RD. Owner: Goodroad, Glenn & Ashley

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

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

#### **STAFF ACTION:**

Crecelius: Thank you Mary Beth. Yes, this petition is a Conditional Use for the General Contractor Rural Use. The property is located in Richland Township. Section 20. It is a 5.05 acre parcel located at 3350 North Starnes Road. The petitioners are Glenn and Ashley Goodroad. The property is currently zoned Agricultural/Rural Reserve. As we can see Richland Township. On the top is a pictometry photo from 2017. The petitioners own 2 parcels side by side, one of which on the south here contains their residence and on the north contains structures being used as a General Contractor Use. So, a little bit of background, the company, it is a lawn care company known as G & G Lawn Care LLC. It has been operation since 2012 and it has been identified as an illegal use and has been under zoning enforcement since 2018. Originally, in 2018 the petitioner was directed to submit a Use Determination Form for Planning Staff to review. The use described within the form was a Nursery Greenhouse Use but with research the company was shown as a General Contractor Use and that can be seen in Exhibit 3 and 4. Currently, the General Contractor, well, at that time the General Contractor Use was only permitted in a few a commercial zones. Now, we have the newer use that is a General Contractor Use Rural Use. We did reach out in October of 2021 to the petitioners to try to pursue this Conditional Use which would be allowed in the AG/RR, FR, CR zones which would make them eligible to apply for this Use Variance which would get the property in compliance with the Monroe County Zoning Ordinance. This is a site visit from this year. There was some road construction so I didn't get too close. As you can see this is looking south toward the 2 properties. On the right we have the petitioner's letter to the Board of Zoning Appeals and on the left we have an updated site plan. This petition was originally scheduled to be heard at the January Board of Zoning Appeals but we found that the requirements for the General Contractor Rural Use, which I will show in just a moment were not being fully met but we do think that the petitioners will be able to meet them, we just have not necessarily have seen a site plan or a statement that would get us to full compliance with the requirements of the Conditional Use. For those of you that are new to the Board, a Conditional Use is by right is you can meet all of the requirements. So, on the left there is was an updated site plan after the continuance from the January Meeting where we did ask them to address the areas that were lacking. One of the concerns now they do show fencing, screening of outdoor storage area, they do mention a new addition to the current existing barn. We have not discussed that with the petitioner. There is not a current Building Permit Application proposed. What we were missing was identification of one of the requirements. They go through and meet most of the requirements. If it was considered for approval one of them would be to combine both properties so that the General Contractor Use does require that the property is mainly residential use and currently both properties are 2 separate lots. So, that would be a requirement if an approval is considered tonight. Kind of the requirement that is the kicker today is number H, Number 3, which is that storage area of the business may not exceed 100 by 100 and we were hoping that the petitioner would be able to address that by showing the current storage outdoor area could be limited to that. It was not

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shown on that last site plan. So, just a quite illustration of this requirement we do think that their outdoor area could be contained in a 100 by 100 as we can see but right now this is a 2020 pictometry photo we can see that there is storage that is kind of exceeding this area. These are bins that they use for mulch and we see vehicle parking that is not necessarily an issue because if approved it would be residence and commercial property so some personal commercial vehicles, some personal vehicles, it is just that everything is fairly spread out and we have not seen anything would be that 100 by 100 requirement. The petitioner did reach out just before this week, the end of last week maybe, stating that the owner of the business, Glenn, was out of town of Ashley Goodroad reached out and did say that so hopefully they will have an update for us tonight. Staff recommendation is to deny the Conditional Use petition. We have requested updates to the site plan to meet the requirements to show that they can meet the requirements but that has not been met.

### RECOMMENDED MOTION

Staff recommends **Denying** the conditional use petition for General Contractor (Rural) of Chapter 802 and 813 because the petition as currently proposed does not meet the conditional use requirements, specifically 813 10 (C)(17)(H) 1-4, that requires limiting storage area to 100'x100'

If approval is considered, Staff recommends that the following conditions to petition:

1. Combine lots 53-04-20-300-002.000-011 and 53-04-20-300-012.000-011 for Planning and Zoning purposes per Chapter 804-2 (B)(4).
2. Apply for a Right of Way Activity Permit through the Highway Department.

### QUESTIONS FOR STAFF – CDU-21-6 - Goodroad

Kaczmarczyk: Does anybody have any questions for Anne? Does any of the Board have questions for Anne?

Sorensen: I do, Mary Beth. Anne, what do they have to do to combine the lots? What process would they have to go through?

Crecelius: To combine lots would be a proclaimed deed that uses the specific language that we have in the Monroe County Zoning Ordinance in Chapter 804 that states those lots are no longer separate and they should be considered one legal lot of record for planning and zoning purposes. It is a fairly simple quit claim deed.

Kaczmarczyk: Please note everybody will be given a chance to speak. We do not take testimony through the chat box so please just wait until I ask. Thank you. Any more question from the Board for Anne?

Owens: Hi, this is Dee. Being my first time on here I am trying figure out, I mean, I have read the material but it sounds like they want to enlarge their area and in so doing fall under newer rules. Is that correct?



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Crececius: This would be to bring their current use that is under enforcement and considered illegal, so this would be bringing it into compliance if they can meet all of the conditions of the Conditional Use.

Owens: Ok and what triggered this exactly? I know this business has been in since 2010. They have been operational since 2010. The rules have changed since then obviously.

Crececius: The property was never in compliance with this commercial use onsite so since 2018 it has been identified and under active enforcement.

Owens: Ok, thank you.

Kaczmarczyk: Ok, Skip I believe you had your hand up there first.

Daley: My question is, well, I suppose it is more confusion than a direct question. They have approached you after this is happening, they are attempting to get this done, you gave them a timeline and they have not complied completely and then there was a continuance in January and it is still not all taken care of. Is that right?

Crececius: Mostly, yes. Active enforcement for 4 years now.

Daley: Sure.

Crececius: When there is active enforcement if there is a way to come into compliance we work on that. If we don't hear from the property owners eventually the enforcement case will go to the Legal Department. We did reach out kind of a final time, saying hey, we have a new use that could potentially work for you and they did contact us back and are now working with us.

Wilson: Just to bring the Board up to real quickly. We did add a General Contractor Rural Use as a Conditional Use last year. Prior to that time you either were a Home Base Business which was difficult to meet if you basically a General Contractor so this use was created but with it was created conditions that were deemed appropriate by the Plan Commission and the Commissioners in regard to having a General Contractors Use in a rural area and one of those conditions was to have limited storage area of 100 square feet. So, that is the rub right now is trying to make sure that they meet that condition in order to be eligible for a Conditional Use.

Daley: Ok, my follow-up question is it seems like the County is willing to give them an opportunity to move forward and to before compliant and it seems like the applicant is interested in making this happen. Perhaps there is a communication problem or perhaps they are just no moving quickly enough, which is a problem if that is the case but what I am trying to understand is why, and what would the process do if we deny this? Can they re-apply for this or is it a done deal and it is over and they just have to cease doing business at that property? Is that what it comes down to?

Wilson: Unless they present it to the BZA that there may be altered conditions they are not eligible to receive a Conditional Permit, Use Permit and accordingly the petition would need to be denied.

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Daley: Upon denial, can they just re-apply?

Wilson: I think they can re-apply after a certain period of time that is either 6 months or a year, something like that. But this is an enforcement case. This is not a legal use under the ordinance.

Daley: Ok. Fair enough.

Creceilius: As a note and maybe this will help Skip, just a little clarification. The continuance from the January BZA was we had reached out and said we think you can meet these requirements, show us how you can meet them. They did send us the site plan that I had a few slides back but it was on I think last Tuesday, which we published the packet on Wednesday so there was not really a whole lot of time to communicate with the petitioner that they still were not meeting the storage area.

Daley: Are you willing to other than to deny them to extend the period of time to make sure that they give you a plan that meets the criteria? Because it looks as if they are interested in making this work and it would be in everyone's best interest I am sure to make this work now as opposed to tying up the man hours and then re-applying and not having the business for 6 months.

Creceilius: The Board could certainly consider continuing or making a request for information from the petitioners.

Daley: Thank you.

Kaczmarczyk: Margaret, you had a question.

Clements: Yes. Am I mistaken or is the storage area increasing in the proposed plan? Is it enlarging and if so to what? It is like 1.5 err 150 by 100 now and is it enlarging?

Creceilius: I would like to have the petitioner when it comes time to talk about that proposed addition now that is pretty much new information but in this original, very first photo from 2017 pictometry photo we can see that the area has enlarged with time where they have outdoor storage mainly along the west side of the property, so behind the barn. We have seen this area increased using pictometry photos and I am sure the petitioners can maybe discuss that potentially proposed new building area.

Clements: Ok, thank you.

Kaczmarczyk: Ok, Dee.

Owens: Yes, if Anne or Larry could point out to me what is the difference, I haven't read it lately, what the difference between General Contractor and Landscape? How did they get bumped from Landscaping to General Contractor?

Creceilius: I can actually answer that for you. The General Contractor definition is purposely rather vague. It is included in your packet. The General Contractor is an individual who contracts to

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perform building, structure, construction related work or to provide supplies on a large scale or an individual who contracts to erect buildings, structures, construction work may include but not limited plumbing, landscaping, electrical, framing, concrete, masonry, roofing, etcetera.

Owens: I looked at that and so did a staff, who made that determination that they were more than a landscaping business?

Crececius: That would be Larry Wilson from the original Use Determination.

Owens: Ok.

Nester Jelen: Dee, I will also mention, this is Jackie, when we took that text amendment forward to make the Rural General Contractor Conditional in the rural zones, we did amend the definition of General Contractor and added in the specific examples including landscaping, so that definition had changed a little bit. So, the original Use Determination that Larry had made at that time was a prior definition that didn't include that example of landscaping.

Owens: Ok. Thank you.

Nester Jelen: Mary Beth, you are on mute.

Kaczmarczyk: Sorry about that. Ok, are there any more questions for staff from the Board? Seeing none. Is the petitioner here and would they like to speak?

Crececius: I did see them on earlier so it may just take a moment.

## **PETITIONER/PETITIONER'S REPRESENTATIVE – CDU-21-6 - Goodroad**

Goodroad: I am on. I am Ashley Goodroad.

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

Goodroad: Yes, I do.

Kaczmarczyk: Alright, thank you. Go ahead.

Goodroad: I think my husband is on the call as well. This started as actually this has been many years but this started as just kind of came out of the blue, a competitor of my husband's made a complaint to the county about his business being at his home. So, that was kind of the first that we learned about being not being compliant. So we a lot. We hired an attorney. We worked on this. Whenever covid came, offices shut down, no work was being done. We had put through to the nurse, so we had done pretty much on our end everything that has been asked, jumped through this hoop, do this paperwork. I think our person in that office has changed multiple times. I have went in personally and sat down and that was somebody and they pulled up paperwork, hey, try this, why don't you try this. So, we have been working actively on this. It did go through a slowdown period during covid. Then this new Conditional Use Variance came along. These seems

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like something that can really work for us. I have been trying to work with my husband on it but he has been doing along of the leg work, doing the measurements and all of that. Anne did reach out to him I think it was last week. He was out of town and he asked me to get in contact with her so I did get into contact with her and said, hey, what do you need, call me, email me, what do you need from us because we did not what this to get continued again. I am here to help. I did not receive a call back. I hear from here that it is after the date the packet was due but I think it was the day before that she had contacted me so we do need time too to be able to get materials and get it back to and if she wants a change or something and we are more than willing to work on this. We don't want to have to relocate our business somewhere else or go through the process of getting something changed to commercial and that type of thing. So I do think that this can work and we can limit the size. I am kind of thinking I am asking for the additional the like add on to the garage may have been to help with the outdoor storage and he could probably speak better to that. This is his business so this is what he does every day.

Kaczmarczyk: Does the Board have any questions for Ashley? No.

Goodroad: My husband is on but he says he can't talk. So, he is on audio.

G. Goodroad. It just unmuted me.

Kaczmarczyk: Can you please state your name, sir?

G. Goodroad: Yes, Glenn Goodroad.

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

G. Goodroad: Yes, ma'am.

Kaczmarczyk: Alright, please continue.

G. Goodroad: As my wife as stated pretty clearly, all of this started not even from a standpoint from the county or anybody else but a competitor wanted to push a prerogative that didn't involve anything but himself. We have tried and continue to try working with our planning. Really a lack of communication on their part doesn't help when there is such a void in their willingness to come out and speak with anybody or to speak with somebody on the phone rather than trying to use electronics, especially when you are limited on the availability for internet, I mean, our house is so rural that we can't even get anything by dsl almost a dialup tone. So, we are trying to our best. Obviously, I am just a small business I can't afford to just go in and go into what they deem the best for every person. The reason that I associated the red area in the new site plan was because I believed 100 be 100 was for outdoor storage only, so if we added onto our pole barn then obviously then we would have more indoor storage and not have to worry about it. That was very unclear and we tried to get those things communicated to Anne but nothing was ever produced from that. I'm sorry. This is a difficult process obviously for every person. All I am trying to do is make a living and provide a living for 4 or 5 guys that come and help us. It is just upsetting that we have to go through all of this for no lack of our neighbors aren't complaining. We aren't having any other issues other than just this onset from what we have received.

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Kaczmarczyk: Ok, are you done sir?

G. Goodroad: Yes.

Kaczmarczyk: Ok, does the Board have any questions for Mr. Goodroad?

Daley: I do.

Kaczmarczyk: Ok, go ahead Skip.

Daley: Mr. Goodroad, what would it take to get you into compliance in regards to time? I heard you speak to not having reliable internet, those are all, as valid as that might be, let's cut through this, how much time would be needed? You understand now I trust at this point what is required by the county of you to come up to compliance. What will it take in terms of time to do it and to find time to get to their office, sit down with them in person if you can't do this? We are looking to solve this problem. We are not trying to put you out of business or at least I am speaking for myself at least. So, my question to you is, what kind of time, 30 days, 60 days, what will it take?

A.Goodroad: Richard, hold on just a second. I think sometimes the way things are written they are a little bit hard to understand and it is like what exactly are they asking and if you can't get an answer back and communicate well back and forth it is like some of this looks like jibber at least to me. I am like what exactly are they asking. So, it would be nice to some times to get an explanation to know exactly and I think that has kind of slowed down things but Glenn how long do you think it would take to be in compliance with what they are asking here?

G. Goodroad: If I could have 60 days I could be, I could hope, well, I want a guarantee that we are going to be accepted and granted the variance before I spend a ton of money. Just to put up the fencing my material cost is almost \$4,000 and that was estimated over a month ago.

A.Goodroad: But did you say that you have a full year to get those things done after it is approved or you know someone that had additional time. I think they are asking how time do you need to get these things done to where they could approve it outside of the things that you have additional time to complete. Is that right?

Daley: That is my question.

G. Goodroad. I mean if we had 60 days. It is hard to tell with the weather obviously but I believe we could do it before then.

A.Goodroad: But you saying put up fencing and do all of those things that we actually have additional time to do. He is saying just the things on here that we need to do to be in compliance to get this approved.

G. Goodroad: I believe the only thing that they are worried about is the 100 by 100. Is that correct?

A.Goodroad: That is what it looks like to me.

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Kaczmarczyk: Is that correct, Anne?

G. Goodroad: I'm sorry?

Kaczmarczyk: I was making sure with Anne that was correct.

Creclius: That is correct. That is the only condition that is left and Larry or Jackie correct me, there always could be a condition of time put on. It does not necessarily have to be completely at the next Board meeting but there has to be some kind of stipulation of date of when those improvements will be completed.

Clements: If I might interject here, it seems to me that there are 2 issues. One is up until this time because of different constraints that the Goodroad's have right now and as well as it is a bureaucratic process that they really need to work with Planning in order to have this come before the Plan Commission and get it approved with more certainty and so I think that what we are hearing is that the Goodroad's could use 60 days to get the plan together and come back in and get it approved and then the 100 days start. Am I missing something here, Anne?

Creclius: I believe more time would be helpful. I do think like the petitioner is stating that they can meet that requirement. Jackie or Larry do you want to discuss why it was brought today or?

Nester Jelen: Sure Anne. One of the things in the Board of Zoning Appeals Rules of Procedure there is allowance for continuance by the petitioner. Last month we thought it was necessary to continue it by staff. This month typically we send out the packet and if the petitioner is not approving of maybe the recommendation by staff or there are additional questions they are able to request a continuance prior to the meeting or at the meeting at this point. So, that is something that is able to be requested. Because this is an enforcement issue they are still operating today outside of a large 100 by 100 storage area. That is 10,000 square feet. That area does include all indoor storage of the commercial business as well as outdoor storage and I apologize if that is unclear but we are trying to clarify that today, so the entire storage area must be within the 100 by 100 area to qualify for the use. We are not saying in order to apply for the Conditional Use your site already has to comply with that storage area, what we need is a site plan that shows that you are committing to comply to that area and then if you don't we are back at possible enforcement. So, following this Conditional Use application we can file for a site plan and go out to the site and you would apply for what's called a Land Use Certificate. That is when we would actually show that you are compliant with all of the requirements that you said that you were able to. So, just to clarify in case a continuance of 60 days is to put in improvements that wouldn't necessarily be required before the next BZA but you do have to have a site plan that gives us enough information to show that you are able to meet all of the conditions and comply with the use.

Clements: Is the storage area of the 100 by 100 sufficient and adequate? I mean because they are looking to enlarge not to ....

G. Goodroad: No, there was no plan to enlarge.

Clements: Ok.

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G. Goodroad: Like I stated before the red area was only because we thought that it was for outdoor storage not indoor. That area was already there.

Clements: So, Jackie just said one of the goals is to get the storage area down to 100 by 100. Is that feasible for you?

G. Goodroad: Yeah. I don't see that as an issue.

Clements: Ok. That is all that I needed to know.

Kaczmarczyk: Ok, are there any more questions for the petitioner or staff?

Sorensen: Mary Beth I have a question for staff. If they combine their property does that make a difference on the 100 by 100 that we are talking about or is that just 2 separate things?

Creceilius: It would not be a requirement for the 100 by 100. It is a different requirement that states that the General Contractor Rural Use would be on the same lot as the residential use.

Sorensen: Ok, thank you.

A.Goodroad: Anne, why do you feel like we need to combine those 2 lots? Why is that important for this?

Wilson: Because you can't meet the requirements for the Conditional Use unless it is a 5 acre lot and the house is on the same lot as the business.

G. Goodroad: So, it is just the house and the business. The business is currently on a 5 acre plot. The house is on a separate plot.

Wilson: Right the primary residence has to be on the property with the business being operated.

Creceilius: This is Condition B that is on your screen right now.

Nester Jelen: We would be happy to go over with both of the Goodroad's following this meeting if this petition does get continued by the BZA, we can go through each one of these and if you have questions following that we will make sure to answer those quickly and we can do so next week.

Kaczmarczyk: Alrighty then, any more questions for staff or the Goodroad's?

Creceilius: I would like to note that when Jackie says next week we are, County Government is closed tomorrow, and we might be expecting a closure on Friday as well.

Kaczmarczyk: Yes, I can understand that concept. Those of us who work from home will be working. Alright. Is there anyone here from the public that would like to speak on behalf of this petition? Seeing none. Is there anyone from the public that would like to speak against this

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petition? Seeing none. Does anyone from the Board have a motion ready?

**SUPPORTERS – CDU-21-6 – Goodroad: None**

**FURTHER SUPPORTERS – CDU-21-6 – Goodroad: None**

**REMONSTRATORS - CDU-21-6 – Goodroad: None**

**ADDITIONAL QUESTIONS FOR STAFF – CDU-21-6 - Goodroad**

**FURTHER QUESTIONS FOR STAFF – CDU-21-6 - Goodroad**

Daley: I would be happy to provide a motion if whoever is running the screen could through up the data for me to go off of. **I would like to make a motion on case CDU-21-6, Goodroad General Contractor Conditional Use in Richland Township for Section 20 at 3350 North Starnes Road that we continue for a later meeting with a condition that the petitioner meet with the County over the next 2 weeks and then has a 30 day period afterward to comply with their findings in terms of a solution to the outdoor storage.**

Nester Jelen: Skip for notification reasons and since this is broadcast on CATS, **is April 6, 2022 adequate time?**

Daley: **That is perfect for what I am suggesting.**

Owens: I would **second** that.

Kaczmarczyk: Larry will you call the roll please?

Wilson: I sure will. The motion is to continue CDU-21-6, Goodroad General Contractor Conditional Use application to the April meeting of the Board of Zoning Appeals. A yes vote is a vote to continue the matter and the hearing on the conditional use until the April Board of Zoning Appeals hearing. Margaret Clements?

Clements: Yes.

Wilson: Dee Owens?

Owens: Yes.

Wilson: Skip Daley?

Daley: Yes.

Wilson: Mary Beth Kaczmarczyk?

Kaczmarczyk: Yes.



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Wilson: Vicky Sorensen?

Sorensen: Yes.

Wilson: The hearing on CDU-21-6 is continued to the April meeting.

**The motion in case CDU-21-6, Goodroad General Contractor (Rural) Condition Use, in favor of continuing this hearing to the April 6, 2022 Board of Zoning Appeals Meeting, carried unanimously (5-0).**

## DRAFT

### NEW BUSINESS

#### 2. VAR-21-71

#### **Griggs Floodplain Compensatory Storage Variance to Chapter 808**

One (1) 0.46 +/- acre parcel in Van Buren Township, Section 12 at 4102 W Glen Oaks DR.

Owner: Griggs, Denise Lynn & Adams, Gregory Elisha Li

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

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

#### **STAFF ACTION:**

Behrman: This is 0.46 acre lot located in Van Buren Township, Section 12 at 4102 W. Glen Oaks Drive. I did see that one of the owners, Denise, is on the line tonight so she will be able to speak on this. It is zoned RS3.5. The request is a design standards variance to Chapter 808. This is our Flood Damage Protection Chapter and this specific item is 808-5 (A)(11) Compensatory Storage Requirements. Basically, the purpose of the project that the petitioners are proposing to add fill to their driveway, which is an 82' by 25' area to raise the elevation, which will get out of the Special Flood Hazard Area. They will be adding fill between 6 inches and 3 feet. The petitioner had obtained the DNR Certificate of Approval that is essentially like a floodway permit and also DNR Engineering No-Rise Certificate and if this variance is approved then the 2 pending permits that they have going, a Grading Permit; IG-21-2, and Floodplain Development Permit; FP-22-1 those can be issued and work can commence. So, this is located just off of Curry Pike and West State Road 45 in this neighborhood right here. This is the map that we have and laid upon here are 2 flood maps. We have the FEMA Floodplain map, which is the grey hatched area and that actually matches the DNR best available Flood Zone Map. We utilize both of those when assessing a property and the activity that is occurring in a regulated floodway. In this case a detailed study was performed by FEMA and so DNR adopted their Best Available Data Layers. This is more of a kind of honing in on the site. The street is West Glen Oaks Drive and you can see that the floodplain is essentially just their driveway. The way that Compensatory Storage works is that you, I think I have it on the next slide but you have kind of keep an equal amount of the amount that you fill you have to take out an equal amount within the floodplain in the same property. This is the exact language that is in our ordinance here. The excavation shall take place in the floodplain and in the same property in which the authorized fill or structure is located. So, this is kind of a little bit difficult seeing that this is their driveway that you would have to put a significant divot in that driveway to kind of bring the fill up along there. So, we did kind of see that this was a hardship. Let's see, and I am going to add that this ordinance we have to comply with state regulations which come under the federal umbrella of the Federal Emergency Management Association so we adopted this ordinance in 2017. DNR had also given us some optional design standards that the County could adopt and the County adopted all of them. This is one of those optional items that was adopted in 2017. I think we do utilize this when we work with people in the floodplain. In this case because of the way the site is laid out it makes it a little bit tricky. This is some aerial photos of the site and I will say that June 18, 2021 we had a significant flood event in Monroe County and I was out on June 25<sup>th</sup> doing some inspections. I talked with many people down in this area here that had experienced flooding. You can probably see from the petitioners letter that they sustained about 22 inches in their home from that flood, so this whole area here is impacted and I think that because they have got that DNR Engineering No-Rise Certificate that is important just to kind of let this community know that this project is not supposed to significantly raise the elevation level

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of the flood waters. These are a few other site photos. You can see how their driveway kind of dips down and the way that the street from Curry Pike comes in water just runs down the street and then runs right into their driveway. I do believe that the house just to the west of them also has the same kind of similar scenario. These are just a few other photos. I will point out that when staff did an inspection we saw that they were putting in a footer which was not part of the state permit description and it was going to complicate and require much more engineering to kind of go through the permitting process. So, they have not, they will not be perusing a structure here at this time and again it was just going to go back to just adding fill. I am also going to mention that they have been doing some hardscaping and a little bit of grading work here but that is outside of the floodplain, did not see to trigger any further grading permit and I will also say that Kelsey Thetonia, our MS4 Coordinator is on the line tonight and she can speak to other drainage concerns. Because this is a sensitive area. It is in a critical watershed and you may want to hear from her as a staff person that works with storm water all the time. This is the petitioner's site plan depicting the project site that 25 by 82 square foot area and the petitioner's letter kind of also describing that they did have 22 inches that was back in February, I am sorry in June they had the 25 inches enter into their house. So, they had those back to back kind of incidences. It is frustrating. I can see why they are wanting to make this improvement and hope that it will help reduce their chances of flooding in their home. This is in the packet. It is the Certificate of Approval from the DNR. This is essentially their state permit that allows the work to occur. It was issued right when covid was happening and one thing that was noted on the final page is that is in a final waiver for any local ordinances. Like I did say our local ordinance is more strict than the state ordinance because we adopted all of those optional items and the contractor or the owner, there was a miscommunication and no local permits were sought at the time so they have kind of been on a cease and desist order since June with no driveway being kind of torn up in this condition. So, they are looking forward to kind of remedying this and getting this zipped up. I will make note since Denise is here, this has an expiration date in March, so you may want to pay attention to that with regards to seeing if the state can renew that. Then the Engineering Notarized Certificate that was issued in December just this past year, I am sorry it was issued October 21, 2021 and it really states that the project was small enough that it would considered causing No-Rise in the regulatory flood stage for this area. Staff is recommending approval for VAR-21-71 for the Floodplain Compensatory Storage Chapter 808. Staff finds that there are practical difficulties associated with the project and that the design of the home and this driveway redesign has support from DNR Engineering to support this project without Compensatory Storage design because it is an optional design standard. The proposed grading project will result in less chance of the residence flooding in future storm events. It is never a 100 percent guarantee but this should help on even some of those smaller events I would think. Does anyone have any questions?

CASE NUMBER	DETAIL	RECOMMENDED MOTION
VAR-21-71	Floodplain Compensatory Storage Chapter 808	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 Floodplain Variance There are practical difficulties associated with the project in that the home design necessitates the driveway redesign and there is support from DNR Indiana Engineering to support this project without compensatory storage design. The proposed grading project will result in less chance of the residence flooding in future storm events.

**QUESTIONS FOR STAFF – VAR-21-71 - Griggs**

Kaczmarczyk: Any questions from the Board to Tammy? Dee.

Owens: Thank you very much. Considering my ignorance on this as I looked at the pictures I didn't see it anywhere if the driveway is raised up doesn't preclude being able to use the garage ever again? I guess it really doesn't matter but keeping water out of the house is the main purpose.

Behrman: I will let the petitioner speak to that. They right now are just immediately wanting to fix this area. There has been talk about possibly putting a structure on this side and maybe relocating the driveway, which would require a new driveway permit but it would be up and out of the floodplain and not in that floodplain area so easier to kind of work within that area should they chose to.

Owens: Ok, thanks.

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

**PETITIONER/PETITIONER'S REPRESENTATIVE – VAR-21-71 – Griggs**

Griggs: Yes I am here and to explain yes we are not going to be able to use our garage as a garage if we do this.

Kaczmarczyk: I am sorry, can you please state your full name?

Griggs: Oh, I am sorry. Denise Griggs.

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

Griggs: Yes.

Kaczmarczyk: Ok, you can continue.

Griggs: Sorry. I got ahead of myself. The plan is to block up where the garage door is currently and then add some windows so that it matches the other side. But we will lose the use of our garage as a garage completely because we will be putting in a good 2 and half or 3 feet of soil where that garage door is.

Kaczmarczyk: Does the Board have any questions for Denise? No, don't see any. Ok, is there

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anyone else there that wishes to speak on behalf of this petition? Seeing none. Seeing none. Is there anyone that would like to speak against this petition? Seeing none. Does one of the Board members have a motion ready? Margaret.

**SUPPORTERS – VAR-21-71 – Griggs: None**

**FURTHER SUPPORTERS – VAR-21-71 – Griggs: None**

**REMONSTRATORS - VAR-21-71 – Griggs: None**

**ADDITIONAL QUESTIONS FOR STAFF – VAR-21-71 – Griggs: None**

**FURTHER QUESTIONS FOR STAFF – VAR-21-71 – Griggs**

**Clements: In case number VAR-21-71, regarding Floodplain Compensatory Storage in Chapter 808, I would like to move that we approve the Floodplain Variance because there are practical difficulties associated with the project as we have discussed both in the design and also given the support of DNR Engineering that this is an important project for us to approve and this is at 4102 West Glen Oaks Drive and it is Van Buren Township. The property is owned by Denise L Griggs and Gregory E Adams. So, I would like to propose that we make a motion that we approve this.**

Owens: I **second**.

Wilson: I will call the roll. The vote is on VAR-21-71, Griggs Floodplain Variance for Compensatory Storage as required under Chapter 808. The motion is to approve the variance based upon the findings of fact. Again, a vote in favor is a vote to approve the variance. Dee Owens?

Owens: Yes.

Wilson: Skip Daley?

Daley: Yes.

Wilson: Mary Beth Kaczmarczyk?

Kaczmarczyk: Yes.

Wilson: Vicky Sorensen?

Sorensen: Yes.

Wilson: Margaret Clements?

Clements: Yes.

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

**The motion in case VAR-21-71, Griggs Floodplain Compensatory Storage Variance to Chapter 808, in favor of approving the variance, carried unanimously (5-0).**

## DRAFT

### NEW BUSINESS

- 2. VAR-22-1a **BB Profile Landscaping Variance to Chapter 830**
- 3. VAR-22-1b **BB Profile Surfacing Requirement to Chapter 806**

One (1) 9.07 +/- acre parcel in Richland Township, Section 36 at 3432 W Profile Parkway, parcel #53-04-36-100-054.005-011.

Owner: BB Profile LLC

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

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

### STAFF ACTION:

Crecelius: The first variance is for BB Profile. It is from Landscaping from Chapter 830. The second variance is a Surfacing requirement from Chapter 806. The property is platted as Lot 5 in the Pinnacle Business Park Major Subdivision. It is off of the somewhat recently constructed Profile Parkway at 3432. It is currently zoned under Chapter 833 as General Industrial. On the top right is the illustration pictometry photo, fairly old of Lot 5. It does not necessarily show the completed construction of Profile Parkway Drive but you obviously see the outline of Profile Parkway that has been totally completed. On the bottom left is kind of a location map just to show you where we are on Curry. We did see kind of this general area a few months ago for that off-street parking, which is right here, so that is all within the same subdivision. So, this is just a snippet of the Major Subdivision Final Plat looking at Lot 5. The petitioner has applied for a commercial site plan and the proposed use was determined to be Warehousing and Storage. SO, these 2 design standard variances are requested for, well, one is landscaping, so the commercial site would require an approved site plan for occupation of the site and development of the site. Landscaping such as bufferyard, interior and perimeter landscaping would be required under Chapter 830 and then the Surfacing requirement would be that off-street parking areas would be constructed using a plant mix asphalt concrete, porous asphalt or porous concrete or permeable paver systems. Upon staff site visit, the site is currently being occupied. The commercial site plan is not been approved. The intent of the original use, which you can see under the original Use Determination, which is Exhibit 5, was that it would be a Duke Utility lay down yard for storage of utility poles as they work on a fairly large replacement of utility pole within Monroe County and also the City of Bloomington jurisdiction. So, the site visit showed that there was more than just storage of utility poles, that there is personal parking, vehicle truck parking, a construction trailer was also located on the site along with multiple dumpsters. Under Chapter 833 we are not necessarily concerned about expanded use because it would be covered under the use of Warehousing and Storage but those uses do need to be identified under an approved site plan with proper building permits applied for. Currently on this grading you can see some of the actual utility poles. Upon update after releasing the packet, the petitioner went ahead and sent us a photo that they had installed fencing. We have directed the petitioner to apply for an after-the-fact permit for this fencing. To note that the current site plan would require a building permit for the construction trailer placement. These will be pending approval of that site plan. Staff is recommending denial for both variances. Landscaping specifically is that landscaping could include some screening but it wouldn't have included perimeter landscaping. Screening could have been through landscaping or fencing with an approved layout before installation and the surfacing requirement would be that the site is also being used for large equipment, employee vehicle parking. Within the petitioner's letter to the Board of Zoning Appeals they state that the surfacing requirement would not

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necessarily be required for just the storage of the utility poles. We can clearly see that the site is being used for more than that, which somewhat mitigates the petitioner's reasoning at this time. Does anybody have any questions?

CASE NUMBER	DETAIL	RECOMMENDED MOTION
VAR-22-1a	Landscaping to Ch. 830	Denial
VAR-21-1bb	Surfacing to Chapter 806	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:*** Staff recommends denial due to the lack of practical difficulties, specifically:

1. *Landscaping: Screening is required of outdoor storage per Chapter 833, which can include fencing or perimeter landscaping.*
2. *Surfacing: in addition to the storage of utility poles, the site is also being used for large equipment and employee vehicle parking which negates the petitioner's reasoning.*

### QUESTIONS FOR STAFF – VAR-22-1a & VAR-22-1b – BB Profile

Kaczmarczyk: Any questions for Anne from the Board?

Daley: I have a quick question Anne. This is Skip. What would it take to get this approved for your recommendation? What would it take for your recommendation to have been an approval at this point?

Crecelius: We probably could have gotten behind the Surfacing Variance request if it was truly only storage of utility poles but we can clearly see that the site is being used for warehousing and storage and a lot more than that. The landscaping I am not sure if I can specifically state. Larry, Jackie, do you want to expand? I am not sure.

Wilson: I will jump in here real quickly. To grant a variance there has to be practical difficulties. Practical difficulties are not just the extent of complying with the ordinance requirements. In this case it is clear this is basically a contractor storage yard. It is not just temporary storage of telephone poles and as a result staff felt that they needed to comply with the same requirements that are placed on any other individual that is trying develop a contractor's storage yard, which includes paving the parking lot as well as providing landscaping around the storage yards.

Crecelius: I will add to that. One of the things that the petitioner will speak about is that this use that is being proposed is temporary. We do not, we have very few truly temporary uses that are approved within the zoning ordinance. To develop a commercial site is to develop it with the full compliance of the zoning ordinance.



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Nester Jelen: Just to add onto that, Anne that was spot on what I was going to say but in addition even if the petitioner is verbally stating that they can't meet the requirements because the use is temporary, we don't have a method to typically under the zoning ordinance enforce that they actually stop business that has been approved under a site plan after so many years. That is not the way that we are set up to enforce the ordinance. So, even though that is their basis for of these variance requests is that the use is temporary, we don't really have a method as they have proposed to enforce that temporary nature of the site.

Wilson: I will further note that the temporary uses that we have are fairly usually short term uses not a year, 6 months. They are generally a weekend or 10 days for a temporary use and under those conditions we don't requirement permanent improvements but longer periods of time we do require compliance with the ordinance.

Kaczmarczyk: Any more questions from the Board for staff?

Sorensen: I have a question Mary Beth. On page 33 at the bottom it says, an approved commercial site plan filing with Monroe County is required before occupying the site. Did they get that permit or did they just set up everything?

Crecelius: They applied, it has not been approved.

Sorensen: Ok, thank you.

Kaczmarczyk: Ok, any further questions for staff from the Board? Seeing none. Is the petitioner here and would they like to speak?

### **PETITIONER/PETITIONER'S REPRESENTATIVE – VAR-22-1a & VAR-22-1b – BB Profile**

Cutshall: Yes, this is Warren Cutshall with BB Profile.

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

Cutshall: Yes, I do.

Kaczmarczyk: Ok, thank you.

Cutshall: Ok, so I guess first of all my intent is to be in compliance with the zoning ordinance. When this use first came to my attention Duke was looking in mid-November and they said they needed a place to lay down power poles. That was my understanding. We did maybe get ahead of ourselves. The site plan was drafted. It was in review and my understanding was we were still in compliance if they were not occupying the site with in and out traffic. They just they had these giant transmission power poles that they said they needed to get put down. Duke spent significant amounts of money on properly putting down the geo-fabric, the substantial amount of gravel that was engineered properly and then in early January they had a change in circumstances that increased their use when they brought in more of the bucket trucks, other equipment and some

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passenger vehicles. So, I totally acknowledge that we were ahead of ourselves. I did study and work with Smith Design Groupon what needs to be done to be fully in compliance with the design standards. The fence was constructed with the screen that was completed recently and I guess a couple of the things have not been crystal clear in terms of landscaping, for example both sides it is a 60 acre site, this is a 9 acre lot and we are using 2 acres, Duke is using 2 acres primarily, the primarily use is absolutely storage of these things. The transmission project that they are working on is connecting the substation on South Rogers to the station at 11<sup>th</sup> Street. They are upgrading that transmission line. So, in layman's terms it is temporary. They will not be there forever. But I still don't have a crystal clear answer speaking to Smith Design and the planners on for example the side yard what intensity is this and what are the neighboring intensities that are vacant. I don't know exactly what if we are denied what landscaping needs to go in and then I did add another set of materials showing the lot lines. We do not what to put landscaping in this site and then tear it out. There is an environmental restrictive covenant. The red arrow at the bottom of what I am calling the lay down yard that is an affected area that would be where we install the landscaping, so that is, you know, primary and secondary reason I am asking for the variance. We don't want to have to dig that out and then maybe do it over again if the permanent use of this site is something different than what we are trying to do right now to accommodate this use for Duke. I guess on the paving requirements, Larry is that, is the requirement to pave every square inch of the storage area or just where the passenger vehicles are parking?

Wilson: I can't tell you the specific requirement. Basically just an approved site plan showing, typically we require paving for everything in the absence of, typically there may be a variance if it's a case where for example like utility poles where they are going to be dropping them, so that the pavement doesn't get cracked. But that really doesn't apply to passenger vehicles or utility trucks.

Cutshall: Understood. So, I guess what I will say is this is absolutely a temporary use. When Duke moves out, you know, I can make a recorded commitment that we will pave and landscape based on a new site plan when we have more clarity on permanent development. This aerial that you are looking at now shows the yellow stars those lot lines will probably go away. I am working with a large industrial user for lots 2, 3, 4 and 5 to you know to build a large structure somewhere in between those two stars, in which case it doesn't make a lot of sense if we have to put landscaping there now for Lot 5 to then tear it up.

Wilson: What is the timeframe for Duke to be there?

Cutshall: The leases ends one year from today and my guess is they will need it until then and that was what I started with. They were just going to put down power poles for 6 months and really not even be on the site. I think this other project so where out by the airport, you know, needed attention quicker which is why they why you see so much activity at the site now. They have told me they are going to flip back and have much less activity starting in a month or so and it will be a limited amount of traffic coming in and out of there. I probably should have had someone from Duke here but I just didn't think of that.

Kaczmarczyk: Any further questions for Mr. Cutshall or for staff from the Board? None. Ok, is there anyone else here that would like to speak on behalf of this petition? Seeing none. Is there

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anyone here that would like to speak against this petition? Seeing none. Does one of my fellow Board members have a motion ready? Anne, do you have your hand up?

Crececius: I do not. I don't think so.

Kaczmarczyk: Anyone on the Board have a motion ready?

**SUPPORTERS – VAR-22-1a & VAR-22-1b – BB Profile: None**

**FURTHER SUPPORTERS – VAR-22-1a & VAR-22-1b – BB Profile: None**

**REMONSTRATORS - VAR-22-1a & VAR-22-1b – BB Profile: None**

**ADDITIONAL QUESTIONS FOR STAFF – VAR-22-1a & VAR-22-1b – BB Profile**

Clements: I wonder if we could discuss this. Could we have a little bit more discussion now that we have heard from petitioner?

Kaczmarczyk: Sure.

Clements: To me it seems like we would be doing a lot more disturbance of fragile area if we stick to the surfacing and the landscaping requirement. Am I wrong to think that or? It is a 1 year project that we know of but it seems wasteful but also injurious to the surface if we require what is required in the chapter. Am I wrong on that? I would like to hear from Mr. Wilson if possible. It seems to me that this requirement really doesn't fit the temporary need and the future prospects for use of that piece of land. Could you talk to me about that Mr. Wilson?

Wilson: Well, first off it is limited evidence as to what the temporary nature of this use is. Right now it is a storage yard. Two the paving of the area for parking would not interfere with any of the use underneath the site. We don't have provisions in the ordinance that deal specifically with this type of situation. Like I said we have temporary uses that are for a very short period of time but we do not have a use just because somebody wants to use the property in the interim for a lesser use before it is fully developed.

Clements: Are there safety issues with regard to having it the way that it is with regard to the equipment and everything? Are there safety issues that we are concerned about or is it just an appearance?

Wilson: It is a requirement of the ordinance. We don't like it. It is not just us saying that they need to do this, it is what the ordinance requires. Presumably when the Plan Commission and the Commissioners passed the ordinance they took in regard the reasons such as public safety, the environment, drainage, being able to channel drainage into a certain area because you have paving rather than having it just seep down through gravel, curbing, there are all of these things, traffic flow out of a parking lot, safety of pedestrians entering vehicles and getting out of vehicles, clarity of parking angles by having paving and parking stalls painted and directional arrows and so on. There are a variety of things but it is what the ordinance provides and we do not have any ability

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to say, oh, it is short-term, you don't have to comply with the ordinance.

Clements: Ok, thank you.

Wilson: That is the reason or the need for a variance of some type.

Kaczmarczyk: Skip, do you have your hand up?

Daley: I do. My question is for Mr. Schilling. Mr. Schilling, does the Board have the legal authority to provide to make a motion and approve a let's say 15 month temporary variance?

Schilling: I don't believe so. The variance typical run with the land. There is one case whereas a special exception was granted on a temporary basis for an asphalt plant that was connected with a state project, so you could make an argument that you could. But there is nothing expressly in our ordinance that authorizes the granting of a temporary variance.

Daley: And a follow-up to that, if we were to attempt that, would it set a precedent that we don't want to get into?

Schilling: Well, you would certainly open yourself up to that argument. I mean each case is decided on its own unique facts but people would point to that in similar situations as authority for a similar request.

Cutshall: This is Warren. Am I still able to speak?

Kaczmarczyk: Sure, go ahead sir.

Cutshall: If we, this time of year is not the best time of year for paving, if we had time an ability to get our site plan such that we show paving the entire driveway, maybe paving, you know, some proportion of the lay down area where vehicles will be at least passenger vehicles maybe a limited number of the utility vehicles and sort out what is acceptable for landscaping, given the environmental and other issues I have mentioned, could we get a variance for 3 months or a temporary approval so that we can proceed and be somewhat in compliance with the County Planning Department?

Kaczmarczyk: That a question for legal or staff? Larry, can you advise on that?

Wilson: I guess I would rather continue it for 90 days rather than have a variance that may just expire. Can we just kick it down the road either way?

Schilling: Larry, didn't we do something similar to this with the plumber down there on the south side of town?

Wilson: We did. It is always an awkward situation when people just proceed ahead into the use and then come in for the variance afterwards. It makes us look like we are being difficult or like making them remove a use that wasn't permitted. I think I would rather continue it 90 days and

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then give Mr. Cutshall a chance to put together a site plan. By that time the paving plants will be open again, landscapers will be putting in plants, covid will be over.

Kaczmarczyk: Jackie. I'm sorry. I agree with you, Larry. Jackie, what did you want to say?

Nester Jelen: I was just going to state that. The site plan that we have received to date does not have a full submission including landscaping. So, I think that continuing this may give the petitioner and their engineer a little bit more time to provide us with a better site plan and we may even find that they need more variances or less variances because as the petitioner stated one, he is not sure of the landscaping requirements, that is something that his engineer is supposed to be completing for him and we can work with him on that and certainly we can show that and see what the deviation actually is of what is required versus what he is asking for. Right now he is asking for no landscaping, no paving and I think that there may be some situations where he may put in some base line landscaping if he knows that let's say the eastern property line is not going to change and there will be some landscaping there indefinitely even if a use does change. But we don't have that right now, we just have no landscaping. But I will also note on the paving question, so paving can reduce dust. It can also make it so leaks from any stored vehicles could be diverted purposefully into a detention or oil separation system. So, that is something if there are questions on that we are happy to answer and then finally I think one point I wanted to bring up is that the petitioner has offered in this meeting a written commitment to limit, self-limit the timeline of the use. If that is acceptable to BZA members and that could provide a basis for the variance and also once that time period passes the understanding would be that any new use would have to meet all standards at the time, so landscaping, paving, etcetera or else come back for a new variance. So, that is something that we didn't have prior to this meeting and maybe a continuance and formulation of some sort of mixture of written commitments, better site plan, more discussions, might be helpful.

Kaczmarczyk: Ok. Margaret, do you have a motion?

Clements: Yes but I see Vicky Sorensen's hand is raised.

Kaczmarczyk: Oh, ok. Hi, Vicky.

Nester Jelen: You are on mute, Vicky.

Sorensen: Sorry. With regard to the landscaping which says it can include fencing, wasn't there a fence around there and is that considered they are in compliance on that part?

Nester Jelen: Fencing can reduce the landscaping. That fence had actually gone up between the time this packet had gone out and today so that is something that we are just now evaluating and so I think it would be better again, to review all of these things in a completed site plan and then get back to you.

Sorensen: Ok, thank you.

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**FURTHER QUESTIONS FOR STAFF – VAR-22-1a & VAR-22-1b – BB Profile**

Clements: So, that would actually be **my motion with case VAR-22-1a, Landscaping to Chapter 830 and VAR-21-1b, Surfacing to Chapter 806, and this pertains to the petitioner BB Profile, LLC, at 3432 West Profile Parkway in Richland Township, I would like to make a motion that we continue this to the May 4<sup>th</sup> Meeting of the Board of Zoning Appeals in order to give the petitioner an opportunity to work with staff or continue to work with staff on developing a better site plan with more explicit conditions that they have represented to us here tonight and I just think that continuing this the May meeting is a happy solution. That is my motion.**

Kaczmarczyk: I **second** the motion.

Wilson: It has been moved and seconded to continue VAR-21-1a and VAR-22-1b to the May 4<sup>th</sup> meeting of the Board of Zoning Appeals. A favorable vote is to continue this hearing unit the May 4<sup>th</sup> meeting. Mary Beth Kaczmarczyk?

Kaczmarczyk: Yes.

Wilson: Vicky Sorensen?

Sorensen: Yes.

Wilson: Margaret Clements?

Clements: Yes.

Wilson: Dee Owens?

Owens: Yes.

Wilson: Skip Daley?

Daley: Yes.

Wilson: The petitions both VAR-22-1a and VAR-22-1b are continued to the May 4<sup>th</sup> meeting of the Board of Zoning Appeals.

**The motion in cases VAR-22-1a, BB Profile Landscaping Variance to Chapter 830 and VAR-22-1b, BB Profile Surfacing Requirement to Chapter 806, in favor of continuing both petitions to the May 4, 2022 Board of Zoning Appeals Meeting, carried unanimously (5-0).**

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**REPORTS:**

Nester Jelen: I have a quick announcement Mary Beth before you go to reports.

Kaczmarczyk: Ok.

Nester Jelen: So, I just want to take a few minutes to announce that this is Larry Wilson's last BZA meeting. Larry is retiring at the end of February this year. Larry has been working for the County for 11 and half years or for about 138 BZA meetings. We are extremely grateful for Larry's expertise. He is certainly going to be missed. He has left us in a really good position and we have great staff still at our office. We will be sure to send out an announcement for Larry's retirement, likely a hybrid celebration but we wanted to give you a heads-up so that you can wish Larry a farewell before his February 28<sup>th</sup> departure. So, thank you Larry!

Kaczmarczyk: Larry you will be missed! Wow, it is the end of an era, without a doubt!

Wilson: It seems like there were more BZA meetings than that.

Kaczmarczyk: Happy retirement. Congratulations!

Wilson: Thanks guys.

Kaczmarczyk: I envy you.

Clements: Thank you for all that you do and all that you know.

Kaczmarczyk: Happy retirement, Larry.

Daley: I have one quick question and Larry congratulations. But my question is a procedural one. I seem to recall reading in the operational guidelines of these zoom meetings that it is a requirement for anyone speaking whether it be a Board member, panelist, a staff member or someone giving testimony that at the time of them speaking they need to be for it to be on the record, they need to have video enabled and I have noticed that several people this evening and in some past meetings have not. Am I incorrect or do we need to watch that more?

Kaczmarczyk: I believe it is just Board members. I believe it is just Board members.

Nester Jelen: There was a requirement for when we moved to the hybrid version Skip, you are correct. The legislation is that you have to be seen and heard and that does apply to Board members but again that is if we move to the actual hybrid version, which is after the Governors Executive Orders have run out and right now it goes until March 4, 2022.

Daley: So, there is no requirement now or potentially even if a hybrid were to be in place for those giving testimony to not be seen?

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Nester Jelen: That is the way I understand it under the legislation but Dave and Larry correct me if I am wrong.

Kaczmarczyk: Dave is nodding his head and he is speaking on mute.

Schilling: That was my understanding too.

Kaczmarczyk: Ok, that was as well my understanding. Ok, Dee did you have a question?

Owens: I just had a comment in response to what Skip said. The reason that I stay off camera is because I am at the very end of the dsl line and if I go on camera and if there is anything else running I will drop the entire call. So, I cannot be on camera except on other meetings that I have been in it is like I say hello at the beginning and then go off camera and then maybe say hello at the end for a minute on camera and the seems to satisfy. Plus we are not in a hybrid situation yet. So, FYI.

Daley: For the record, my comments and questions were not directed at anyone in particular they were just a matter of making sure that we are protecting the integrity of our legal decisions that we are making.

Owens: Yeah, you bet.

Clements: I am concerned for the good people of the county who also face the situation that Dee faces, that when we do go to the hybrid meeting that if they have some many technical difficulties that it prohibits them from participating. I would like there to be considered an exception for technical difficulties. There should be allowed an exception to technical and practical difficulties for that appearance because I do know that throughout that county there are a lot of people without adequate bandwidth.

Kaczmarczyk: Yes, one of our petitioners this evening was having that issue. That is why they were on the phone.

Clements: That is all that I have got.

Kaczmarczyk: Are there any reports:

Wilson: I have no reports.

Kaczmarczyk: Larry, you will be very much missed.

Wilson: I will probably just tune in to watch these meetings anyway.

Kaczmarczyk: I will try not to call on you, ok. Larry is on hold!

Wilson: That was a joke!



## DRAFT

Kaczmarczyk: You would miss us that much! But, yes, I will not be here for the March meeting, so be warned I will be in the middle of the ocean with a bunch of Star Trek actors.

Clements: Have a blast!

Kaczmarczyk: It is always such a fun cruise.

Owens: That's cool.

Kaczmarczyk: Yeah, it is the Star Trek cruise and we have been going on it for the last several years. It is a lot of fun.

Wilson: Will you be going in costume.

Kaczmarczyk: I don't but I have this wonderful little stuffed animal that I take with me and he does costumes. Costumes for him are much easier to make and to pack than they are for me, so there is that and he likes his picture taken more than I do too. Anyway, you guys have a good evening. **I move to adjourn the meeting.** Second the motion?

Clements: I **second.**

Kaczmarczyk: In favor say aye.

Sorensen: Aye.

Clements: Aye.

Kaczmarczyk: Larry, you are going to be missed.

Wilson: Thanks everyone.

**Planning/Wilson: No reports.**

**Legal/Schilling: No reports.**

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**The meeting adjourned at 7:05 P.M.**

Sign:

Attest:

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Mary Beth Kaczmarczyk, Chairman

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Larry J. Wilson, Secretary

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