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**BOARD OF ZONING APPEALS
Hybrid Meeting - Minutes
April 5, 2023 - 5:30 p.m.**

CALL TO ORDER

ROLL CALL

INTRODUCTION OF EVIDENCE

APPROVAL OF AGENDA

APPROVAL OF MINUTES: None

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

ROLL CALL: Margaret Clements, Guy Loftman, Skip Daley, Pamela Davidson, Dee Owens

ABSENT: None

STAFF PRESENT: Jackie Jelen, Director, Tammy Behrman, Assistant Director, Anne Crecelius, Planner II, Drew Myers, Senior Planner, Shawn Smith, Planner II, Daniel Brown, Planner II

OTHERS PRESENT: David Schilling, Legal, Tech Services

INTRODUCTION OF EVIDENCE:

Jackie Jelen 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.

DRAFT

ADMINISTRATIVE BUSINESS:

1. Findings for VAR-22-53 case

OLD BUSINESS: NONE.

NEW BUSINESS:

- 1. VAR-23-1** **Cassady Buildable Area Variance to Chapter 804**
- 2. VAR-23-7** **Cassady Use Var. to Detached Accessory Dwelling Unit in Ch 802**
One (1) 0.648 +/- acre parcel in Perry Township, Section 20 at 4820-4830 S Rogers ST, parcel #53-08-20-400-073.000-008.
Owner: Cassady, Randy
Zoned RE1. Contact: acrecelius@co.monroe.in.us
- 3. VAR-23-4** **Bloomington Self Storage Buildable Area (Special Flood Hazard Area) Variance to Chapter 804**
One (1) 7.49 +/- acre parcel in Van Buren Township, Section 12 at 2450 S Curry PIKE, parcel #53-09-12-300-023.000-015.
Owner: Curry Pike Storage LLC
Zoned LB. Contact: dmyers@co.monroe.in.us
- 4. VAR-23-10a** **Legacy Homes & Farms Minimum Lot Size Variance to Chapter 804**
- 5. VAR-23-10b** **Legacy Homes & Farms Minimum Lot Width Variance to Ch 804**
- 6. VAR-23-10c** **Legacy Homes & Farms Buildable Area (15% Slope) Var. to Ch 804**
One (1) 0.4 +/- acre parcel in Indian Creek Township, Section 3 and 4 at 7017 S Harmony RD, parcel #s: 53-10-03-200-015.000-007 & 53-10-04-100-017.000-007.
Owner: Pendleton, James Thomas II
Zoned ER. Contact: dmyers@co.monroe.in.us
- 7. VAR-23-11** **Casey Shake Minimum Lot Width Variance to Chapter 804**
One (1) 6.91 +/- acre parcel in Richland Township, Section 34 at 3144 N Smith PIKE, parcel #53-04-24-101-012.000-011.
Owner: Casey Shake DVM LLC.
Zoned AG/RR. Contact: drbrown@co.monroe.in.us
- 8. VAR-23-12** **Ronchetti/Johnson Buildable Area Variance to Ch. 804**
One (1) 3.36 +/- acre parcel in Van Buren Township, Section 36 at 4465 W Tramway RD, parcel #53-09-36-300-012.000-015.
Owner: Johnson, Samantha; Ronchetti, Todd
Zoned AG/RR. Contact: acrecelius@co.monroe.in.us
- 9. CDU-23-2** **Equine Veterinary Services, Indoor Conditional Use to Ch. 813**
One (1) 35.09 +/- acre parcel in Washington Township, Section 11 at 1301 E Chambers PIKE, parcel #53-02-11-400-003.000-017.
Owner: Renschler, Janelle & Jason
Zoned FR. Contact: shawnsmith@co.monroe.in.us

DRAFT

10. VAR-23-13

Brown ECO Area 3 (18% Slope) Variance to Ch. 825

One (1) 24.02 +/- acre parcel in Benton South Township, Section 31 at 6109 E Kerr Creek RD, parcel #53-06-31-100-013.000-003.

Owner: Bogdanoff, Wendy & Peter

Zoned AG/RR & ECO 3. Contact: acrecelius@co.monroe.in.us

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

11. VAR-23-14a

Ertel & Forsyth Variance to Condition #53 from Chapter 802

12. VAR-23-14b

Ertel & Forsyth Side Yard Setback Variance from Chapter 833

One (1) 2.29 +/- acre parcel in Bloomington Township, Section 36 at 4615 E State Road 45, parcel # 53-05-36-200-007.000-004.

Owner: Ertel, Nicholas & Forsyth, Haley

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

DRAFT

ADMINISTRATIVE BUSINESS

1. Findings for VAR-22-53 case

Clements: We have before us draft findings for VAR-22-53 and Mr. Schilling would you like to introduce this?

Schilling: These are just findings that would support the Board's decision, February 1st decision in the Huff Variance Case.

Clements: Has each member of the Board of Zoning Appeals had an adequate opportunity to review these? If so, is there a motion?

Davidson: **I will make a motion to approve these findings of fact related to that case.**

Owens: **Second.**

Clements: It has been moved and seconded so if you would call the roll. Yes, Mr. Loftman?

Loftman: I am sorry, but I didn't get a chance to talk this over with Mr. Schilling. I don't know if this is worth worrying about, but Item 13, logging and construction of the Huff property resulted in thousands of big trucks using the private driveway. My suspicion is that is "thousands of trips" by big trucks. There probably weren't thousands of individual trucks but there were surely thousands of trips by big trucks. Now, that is nitpicking, and I love to nitpick.

Schilling: It is a good nitpick and if you care to amend that particular finding.

Loftman: **I move to amend 13 to read, "logging and construction of the Huff property resulted in thousands of trips by big trucks."** That reappears later and I think I can find it, in 141. Comparable, the existing private drive. **I move to amend it to read, "the existing private drive has been used by thousands of trips by trucks and other vehicles."**

Clements: Mr. Loftman, would you kindly speak into the microphone when you are speaking?

Loftman: Well, I am sorry.

Clements: Thank you.

Loftman: Yes, I will do my best.

Clements: Thank you.

Loftman: Can I make that as one amendment?

Clements: Yes. Is there a motion to accept the amendments and changes to this draft findings for VAR-22-53?

DRAFT

Davidson: **I move to accept Mr. Loftman's changes to Item's 13 and Item 141 as described.**

Owens: I continue to **second**.

Jelen: It has been moved and seconded to approve the draft findings of fact for VAR-22-53 with 2 changes made to number 13 and number 141 as stated. A vote in favor is a vote to approve the findings of fact. Margaret Clements?

Clements: Yes.

Jelen: Skip Daley?

Daley: No.

Jelen: Guy Loftman?

Loftman: Yes.

Jelen: Dee Owens?

Owens: Yes.

Jelen: Pamela Davidson?

Davidson: Yes.

Jelen: The motion carries 4 to 1.

Motion to approve the draft findings of fact for VAR-22-53, with amendments as attached to motion carried (4-1).

DRAFT

NEW BUSINESS

1. VAR-23-1

Cassady Buildable Area Variance to Chapter 804

2. VAR-23-7

Cassady Use Var. to Detached Accessory Dwelling Unit in Ch 802

One (1) 0.648 +/- acre parcel in Perry Township, Section 20 at
4820-4830 S Rogers ST, parcel #53-08-20-400-073.000-008.

Owner: Cassady, Randy

Zoned RE1. Contact: acrecelius@co.monroe.in.us

BOARD ACTION: Clements introduced the petition.

STAFF ACTION:

Crecelius: This is 2 variances, VAR-23-1 and VAR-23-7. This is a Buildable Area Variance to Chapter 804 and a Use Variance to the Detached Accessory Dwelling Unit Chapter of 802. We are going to hear these separately, so I will start with the Buildable Area Variance. This is the petition site. As we can see 2 different addresses. We have 4820 towards the north and 4830 to the south and a residential accessory structure to the north. The property is zoned Estate Residential 1 under Chapter 833 of the zoning ordinance and currently contains 2 detached primary residences, which would not be considered a permitted use under Chapter 833. Let me clarify, both of these petitions, although they are related, we are going to hear some background that relates to both of them and then we will hear the buildable area variance, go through the recommendation and then we will hear about the next variance. So, right now, let's just go through the background. The petition site and both of the residential structures are within the FEMA Floodplain zoning district AE and Administrative Floodway also known as the Special Flood Hazard Area. Both of the structures are not necessarily compliant with county and state regulatory floodway requirements. So, what we are looking at here is that the use of 2 detached primary residences was considered pre-existing nonconforming and that both structures compliance with county and state floodway requirements were considered pre-existing nonconforming. Here is an example of the area that the FEMA zoned AE Special Flood Hazard Area. This is the entire area shown in yellow, so this is the majority of the petition site and both dwellings. For some background, under Chapter 833 it states that any legal, pre-existing nonconforming use shall continue unit or unless modified or terminated and that normal maintenance and repair of a building or other structure containing a nonconforming use may be performed, provided there is no physical change to the building or structure or intensify the nonconforming use. Also, in Chapter 803-1A, it states that no legal pre-existing nonconforming use of land and/or structure may be enlarged, moved or other wise changed except that such may be changed to permitted use, unless a variance from the terms of the ordinance is obtained from the Board. In July of 2022, the Building Department received a complaint for unpermitted work. They reached out and requested a residential permit as filed and Residential Alteration Repair Permit for lifting the foundation of the dwelling that would be R-22-763 for moving the structure to the west of the location and elevated and raised by 11.3 feet. The Building Department issued a Stop Work Order on 7/21/22 and this is for the property addressed as 4830, so the southern dwelling unit on the property. This is a photo from July of 2022. Because of the elevation and the change in location of one of the second dwellings, one of the dwellings, the use and the structures have lost pre-existing nonconforming status. We are going to outline 2 ways of

DRAFT

compliance. For elevating the structure after-the-fact permitting is required. From the state a DNR Elevated Abode Permit. From the county a Floodplain Development Permit and a county Residential Building Permit. For the compliance with having 2 dwellings on the property the route would either be to apply for a Use Variance or demolish and remove the structure. Some background, the petitioner is a General Contractor, an electrician within the county and is familiar with zoning and Building Department requirements. The petitioner's reasoning to relocate and raise the structure is the structure regularly floods. Planning staff has outlined different options available to bring the property and structures into compliance. We have been communicating with the petitioner for close to a year now and have outlined the different options available to bring the property and the structures into compliance with the ordinance, you can see those details and how it has been outlined in Exhibit 6. A timeline of interactions can be found in Exhibit 4. To specifically look at the Buildable Area Variance request for 4830, the petitioner has submitted a certified plot plan for the property. It shows the former building location and that it has been moved farther to the west. This is how the home currently looks as of February 2023. I am just going to run through multiple photos. On the right is the elevated structure. Directly in front is the first, the northern dwelling and then the structure on the left side of the screen that is the accessory residential structure or garage. This is looking directly west towards the creek. The petitioner submitted architectural plans that shows how this will be an elevated abode once completed. This will have, as an elevated abode it will be required that an affidavit is recorded that the first story will never be able to be used as a residence. It will stay as an area that can be used as a garage or storage and will be required to meet certain standards for being located in the floodplain and that includes floodplain vents. So, in case of a flood water can flow through the structure without hindering the floodplain area. The petitioner's letter is on screen and is provided in the packet. I will just wait just a moment. The petitioner has applied for this one design standards variance from the Buildable Area standards of Chapter 804. The Buildable Area standard states that any building or structure constructed after October 2, 2015, must be located within buildable area and that the following shall not be included as building area, Special Flood Hazard Area as specified in Chapter 808. Because the petition site is entirely within the zone AE Floodway, which is the most restrictive for development and requires state approval. A state permit has been issued for the elevated abode and that is included as Exhibit 5. The Floodplain Administrator has received a Floodplain Development Permit and has requested more information. They have requested an engineered plan to be reviewed for compliance with the Floodplain development Permit and compliance with Chapter 808-5. This variance is the minimum required in order to maintain the structure addressed as 4830 on the site. The structure as the result of the improvements would sustain less flood damage. If the variance is denied all applicable permits must be issued prior to the removal of 4830 South Rogers Street and residents at 4820 South Rogers Street could remain without the need for a Use Variance and would be considered a nonconforming structure, a pre-existing nonconforming structure. Staff recommends approval for the Buildable Area Variance to Chapter 804, VAR-23-1 with the following recommended conditions;

- 1) Certified Engineered Construction plans submitted for review under R-22-763
- 2) Sewer connectivity letter and related Local Floodplain Development permit application be submitted to staff for 4830 S Rogers St

DRAFT

- 3) Demonstrate full compliance with Floodplain Development Permit (FP-23-1) and Building Permit R-22-763 prior to Certificate of Occupancy, including:
 - a. An affidavit for flood openings and venting per Ch 808 shall be recorded with the deed
 - b. Non-conversion agreement per Ch 808 shall be recorded with the deed
 - c. A staff reviewed elevation certificate shall be approved and recorded with the deed

CASE NUMBER	DETAIL	RECOMMENDED MOTION
VAR-23-1	Buildable Area to 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.

Recommended Motion Conditions or Reasoning:

Recommended conditions for VAR-23-1

- 1 Certified Engineered Construction plans submitted for review under R-22-763
- 2 Sewer connectivity letter and related Local Floodplain Development permit application be submitted to staff for 4830 S Rogers St
- 3 Demonstrate full compliance with Floodplain Development Permit (FP-23-1) and Building Permit R-22-763 prior to Certificate of Occupancy, including:
 - a. An affidavit for flood openings and venting per Ch 808 shall be recorded with the deed
 - b. Non-conversion agreement per Ch 808 shall be recorded with the deed
 - c. A staff reviewed elevation certificate shall be approved and recorded with the deed

QUESTIONS FOR STAFF – VAR-23-1 – Cassidy

Clements: Thank you Ms. Crecelius. Do members of the Board of Zoning Appeals have questions for staff?

Loftman: I have no questions on this part.

Clements: Ok, and I don't see that Dee has any either. With that being said, would the petitioner or the petitioner's representative like to speak? You will have 15 minutes to speak to us about what you want to do that and why you want to do it. Thank you, Mr. Cassidy. It is good to see you.

PETITIONER/PETITIONER'S REPRESENTATIVE – VAR-23-1 – Cassidy

Cassidy: Good evening. Randy Cassidy, the petitioner on this project and this is intended to be, oh, I am sorry.

DRAFT

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

Cassady: I do.

Clements: Thank you. Ok, so you can begin. Sorry about that.

Cassady: Randy Cassady. I am the petitioner and the individual who owns this particular aspect. I guess the best way to start everything as it is I didn't have everything put in the packet I actually just brought some hand-outs.

Daley: Point of order, I am sorry but when you are speaking you do have to speak into the microphone.

Cassady: No problem. Randy Cassady, the petitioner for this particular site. I have a few hand-outs if that is acceptable to give.

Clements: Sure.

Cassady: May I present them?

Clements: Yes, please and could you please start the clock again at 15 minutes when he returns? Thank you, Randy.

Cassady: So, the aspect of the hand-out that I just put out shows the basis of why we even started this particular aspect in it because while people love their neighborhood, we want to put everything out there and hopefully, I don't know if you guys are aware or not, my wife grew up in Clear Creek and we have a heartfelt part to it. When this particular structure that we are talking about at this present moment and again, I have only got a couple of these on photos that occur, the aspect of what caused this aspect. We had purchased these homes. We had purchased 2 or 3 in Clear Creek in trying to rebuild the community. Based upon the circumstances of what it is if you truly believe in it, you move to it. So, we had a situation where it was a rental and the water continued to come into the basement. Essentially, we had a basement that continued to flood as water stayed in it and it was rotting from the inside out. Now, if I could show you these of what it is and you could pass them along, please. We tried to figure out what could we do. We had to completely rebuild the foundation and get it up. Being the fact that I had the ability on a personal basis to raise the house up to do the foundation and clear the basement of the water. It had to be, something had to be done. I lifted it up and if you are going to lift it, lift it up. But when you are doing things, you want to take the community into consideration also. So, Anne if you bring up the GIS of the 2 residences, please. What I did when we were looking at it is the foundation had to be redone. I could put it back where it was anyway it goes. But the problem that we ran into, if you notice where the right of way line of the GIS shows, that is something in the future that may be a right of way. When you do things on a basis that you are trying to help the community, you don't just say, oh, I will rebuild the foundation and leave it in the middle of the right of way. That right of way if it comes through will be 45 feet, so you don't want a residence that at some point would impede the county on anything that they do. So, that is the

DRAFT

reason for moving it back. Moving it up was to take care of the aspect of where it was going to continue to have water. Bring it up and do it right. As we look at it from that standpoint, I raised it up. I found out there were issues. I stopped and I think, did I give you the pictures of the basement? We stopped. I have been working with staff and in the meantime, there has been a series of family health issues that has also stopped things and we quit. I have worked with Anne. I have worked with Tammy. I have worked with Jackie trying to get this into resolution to help rebuild the Clear Creek community. All of the conditions that are there we are good with. We have got the sewer permit already. We are moving forward. But we need your help on this. From a standpoint of and I will just pass this along also. Safety wise and risk. In order to make sure that we didn't create anything that was going to impact any of the floodway and such we actually made sure in the basement in that area that has been filled to put in a tank system so that any of the water that can be caught off the roofs will be caught in the tanks and be able to be utilized for irrigation and not create any additional water in the floodway and into the create. That is the aspect, and I am happy to answer any questions.

Clements: Do members of the Board of Zoning Appeals have questions for Mr. Cassady? It looks like an innovative idea that hasn't been tried around here before. You have done a lot of research on this. Do you have a question Mr. Daley? No.

Owens: I do.

Clements: Dee has a question. Ms. Owens?

Owens: thank you. I would like to say that I don't doubt the sincerity of everything that you have said, and your work and it is appreciated for the community. But from the materials that I have read here it sounds like you didn't apply for the proper paperwork in a timely fashion and with your experience you should know better. What is the rationale there?

Cassady: Shouldn't have an did is a completely different analogy. I wish that I had known that this was a complete floodway. I didn't. It is not an excuse but from an aspect of in the community looking at trying to make this our primary residence for the future, I didn't even think about it. We had a tenant. We had a problem. It was rotting and I made the decision that would be our primary residence until we die. That is what it comes down to, the aspect of living in the community of which we are trying to redo completely. Because it has been ignored for years and years. As the sign says we love our neighborhood. We thought it would be best to build. I didn't think about it, Dee, to be quite honest with you, that it had these issues from a floodway standpoint at all. The rebuilding of something and I am not sure how to explain the aspect of when a community or a building or anyone is ignored and let go eventually it just tears down and you have to look at it from a standpoint of what are we going to do. Now, had I known all of the floodway aspect it would be completely different. It is there. It is a residence that has been there since at least 1920. They have both been there. We thought as a local historic preservationist, you don't tear it down, you rehabilitate it. You make things with what it is so that you can continue your sustainability, your historic compatibility and doing it in a sustainability. I will be quite honest, had I known something of this nature from my standpoint of an age aspect and economics, my heart was ahead of my head. It is like the building we are standing in right now. At one point there was a complete group that said tear it down. I have been fortunate

DRAFT

enough to be involved and had the ability to do this. Most people would just say, you know, you ignore the old stuff. You throw them in a home, or you tear them down and you just let it go. Then the history and the character of our community is lost. So, yes, I wish I had known all of the process and quite frankly I may have made a different decision with my head. But I can tell you without a question with my heart I am still right here in the community in Clear Creek. The way it is my wife grew up a quarter of a mile from here. She is the love of my life, and she was born there and that is where we are going to die. We have got all of our children that are gone. They don't reside here. But we are not following them. We are staying here. We will go visit them but if they want to come home, they are going to have to come down to Clear Creek. Passionate enough. Head should have known better. The heart didn't.

Daley: Mr. Cassady, we, well, I appreciate your sense of community and passion. It is coming through very clear.

Clements: Thank you Mr. Cassady. We will hear now from members of the community who are in favor of this project and then members who are opposed to it. Then you will have a 5-minute opportunity for a rebuttal. Are there members of the community either here in person, on zoom or on the telephone who would like to speak for 3 minutes in favor of this proposal. If so, please come to the podium, raise your virtual hand on zoom or press *9 on the telephone to be recognized. Do you see anyone? Ok, are there members of the community who are opposed to this petition? If so, please raise your virtual hand on zoom, come to the podium or press *9. Thank you Tamby. If you would sign in and raise your right hand. Do you swear to tell the truth, the whole truth and nothing but the truth?

SUPPORTERS – VAR-23-1 – Cassady

Wilke-Cassady: Yes, I do. Good evening, my name is Tamby Wilke-Cassady. I just want to say a few things about the petition. Randy and I we live in the house next door, in the 4820 house. We sold our house on Church Lane a couple of years ago actually and this has been a life transition for us trying to rebuild a community and do great things there. But really all that we are trying to do is a remodel of this house and elevate it like it should be. It literally has a basement that is a well at this point. It is a hundred years old. It was definitely beyond repair even if it had stayed where it was. I just want to bring one thing to your attention which is something that I had found through this whole process as well that the Indiana DNR publishes, and it is a question and answer for people located in a floodway. The question is my home is listed in a floodway. My home has not been flooded but my neighbors were. I would like to elevate my home to flood protection grade. Am I allowed to elevate it, and will I need a permit? In answer to that their answer was following several severe flood incidents in 2007 and 2008 new legislation was passed that revised the Flood Control Act, Indiana Code 14-28-1-24B2, effective March 14, 2008, and the revised act authorizes the reconstruction of residences damaged by flood if certain criteria are met. Most importantly in this case additionally this has been interpreted to include elevating a residence located in a floodway that has not been substantially damaged. In order to elevate your home, the following criteria must be met, and they give a simplistic checklist that we met to get that permit. I think it is great that they took that approach for folks like us. Otherwise, it will end up being like 3 other residences in our immediate neighborhood that are completely gone because 2 of them could not get permits. The one next to us has been vacant for

DRAFT

3 years because the lady cannot afford to go through this permitting process. I think that is unfortunate. We are just trying to overcome that process for a couple of residences here and ironically the future in the CDO zoning for this area is MR, which is a 4.8 density per acre. So, I don't see where our having 2 residences that are on a much wider lot than the others, it is like they thought it was a separate lot, but they didn't treat it that way. It has been a church. One of them has been a church, a tv repair and then about 40 years ago it was turned into a residence. I just want to say with regards to Randy, I mean, he has been, there have been a lot of personal things going on that he really has gone into the Planning Department a lot to work through this process. As mentioned earlier it is the first time in Monroe County anything has been elevated.

Clements: Thank you so much. Thanks for sharing this with us. Are there any other members of the community that would like to speak in favor or in opposition to this petition? Seeing none. We bring it back to the Board of Zoning Appeals for further discussion and/or a motion.

Jelen: Margaret, you asked for opposition as well?

Clements: Yes.

Jelen: Ok, I don't see anyone raising their hand on the attendee screen. I don't see anyone.

Clements: Ok, thank you.

FURTHER SUPPORTERS - VAR-23-1 – Cassidy: None

REMONSTRATORS - VAR-23-1 – Cassidy: None

ADDITIONAL QUESTIONS FOR STAFF – VAR-23-1 – Cassidy

Davidson: I have a question for staff. In such a designated area these structures have been there, Mr. Cassidy said since the 20's, so they were grandfathered, or they have already existed probably before we knew what we know today. Can anything be built in such land in a floodway? Are there structures possible in a situation like this where I have had water in my basement, I understand how it works over and over to an erode problem? I understand that. If we live here, we understand that. What can be done with land like that other than park land or wetlands or floodplain or whatever?

Crecelius: They have the option if the permitting process had been pursued before changing the structures, say there were no structures on the property and it exists that way, you could pursue and elevated abode, but you still need to follow the state and county permitting process. They are simply doing it now after-the-fact.

Behrman: I am going to add to that answer as well. I am the Floodplain Administrator for Monroe County, so I am charged with enforcing our local ordinance to make sure that we are in compliance with the National Flood Insurance Program. If we don't follow it, people loose insurance basically and possibly federal dollars toward natural disasters. With this area it is a Zone AE Floodway which is the more dangerous that sees currents that goes through. From my

DRAFT

understanding no new residential can go in a floodway. But commercial sometimes still can. It is pretty strict how that happens with regards to either flood proofing or it is very limited if you can even add fill to these floodways. I just wanted to say like new residential, no in this area but yes to some commercial if they are willing to go out on a limb and try it.

Davidson: Are some people using the elevated option?

Behrman: This is my first elevated abode that I have seen in my 10 years here and I have only been the Floodplain Administrator since 2020 but this is the first one that we have seen. This is an existing residence and that is why it is allowed to stay.

Clements: How long has it been, this residence, how long has it been in the floodway? Has the floodway changed over time?

There is a Flood Insurance Study and maps that were adopted in 2010, December 12, 2010, and that has pretty much stayed as-is. Although in 2017 Monroe County adopted the DNR Best Available Flood Layer and this area is actually the same. That map didn't change because there is a flood study associated with it. So, from my knowledge 2010 is when this has been identified as a floodway.

Daley: I will agree. I am a certified flood insurance professional, so I vouch for everything she is saying here.

Clements: Do you have any questions, or do you have anything that you can add?

Daley: I just have a question of the petitioner real quick, if you will. There were some recommended conditions on this, and you heard staff go through those. Do you have objections to any of those conditions before we go through with motions?

Cassady: I don't think I have any objections to the conditions accordingly. I just ask that we work to get it done prior to Christmas, to be quite honest with you. I would really like to have it complete so that I can have Christmas there.

Clements: That makes sense.

FURTHER QUESTIONS FOR STAFF – VAR-23-1 – Cassady

Daley: I am going to step forward and recommend approval of VAR-23-1, including the 3 conditions set aside by staff. Would staff like me to go through each one of those conditions or is that good enough?

Jelen: I can read them with the motion.

Daley: Ok, so I will leave that as my motion.

Clements: Mr. Daley, is it because **you find that this variance would not interfere with public**

DRAFT

health, safety, general welfare?

Daley: Absolutely.

Clements: **That the use of the land adjacent to the property would not be harmed in value and that the need for the variance really arises out of some peculiar aspect?**

Daley: **That is absolutely why I am making this motion.**

Clements: Ok. Is there a second for the motion?

Davidson: Oh, I have to **second** that.

Jelen: Ok, it has been moved and seconded to approve VAR-23-1, which is the Cassady Buildable Area Variance to Chapter 804, with the following conditions;

- 1) Certified Engineered Construction plans submitted for review under R-22-763.
- 2) Sewer connectivity letter and related Local Floodplain Development permit application be submitted to staff for 4830 S Rogers St.
- 3) Demonstrate full compliance with Floodplain Development Permit FP-23-1 and Building Permit R-22-763 prior to Certificate of Occupancy, including: (A) An affidavit for flood openings and venting per Ch 808 shall be recorded with the deed. (B) Non-conversion agreement per Ch 808 shall be recorded with the deed. (C) A staff reviewed elevation certificate shall be approved and recorded with the deed.

A vote in favor is a vote to approve. Guy Loftman?

Loftman: Yes.

Jelen: Dee Owens?

Owens: Yes.

Jelen: Pamela Davidson?

Davidson: Yes.

Jelen: Margaret Clements?

Clements: Yes.

Jelen: Skip Daley?

Daley: Yes.

Jelen: Ok, motion carries 5 to 0.

The motion in cases VAR-23-1, Cassady Buildable Area Variance to Chapter 804 in favor of approving the variance, with conditions attached to motion, carried unanimously (5-0).

Clements: Thank you, Mr. and Mrs. Cassady. Good luck to you.

DRAFT

Daley: They are up again.

Clements: Oh, they are up again.

Creceilius: We will move forward with VAR-23-7.

Clements: Ok, we did not do them together.

Creceilius: If the previous variance had been denied we would not have heard this variance.

Clements: I see. So, let's move forward with VAR-23-7.

Creceilius: This is the Use Variance to allow a Detached Accessory Dwelling Unit, and this would be permitting 4820, on the same property. We are already familiar with the site. 4820 is the structure on the right. Here is just a quick view of the outside from the back. In order to be compliant for the pre-existing nonconforming use that is no longer because of the change to 4830, the options were to apply for Use Variance or remove the structure. The petitioner has applied for a Use Variance to allow an Accessory Dwelling Unit, a separate, complete housekeeping unit with a separate entrance, kitchen, sleeping area, and full bathroom facilities, which is an attached or detached extension of an existing single-family structure. This specifically would be called a Detached Accessory Dwelling Unit or a DADU from Chapter 802. There are conditions to the Detached Accessory Dwelling Unit, and I will show them here next. The items that would be shown in red would not be able to be met on the petition site and would require later design standard variances to the Board of Zoning Appeals and if this Use Variance is granted these design standards variances would have to come back. The lack of compliance with the required conditions of the DADU further supports the recommendation of denial. The first one is under Condition #55 of the Accessory Dwelling Unit, specifically the DADU, is that the minimum lot size must be 5 acres. The next is number 2; that the DADU meet current standards of the residential, building, mechanical, electrical, energy and environmentally critical areas codes. Number 5; that a DADU must have a permanent connection to either an approved septic system or a sewer system. Number 7; that each DADU lot shall have a separate buildable area for each dwelling. The buildable area required for this zoning district would be 1 acre. So, this standard would require that there be 2 acres of buildable area. The property is 1.25 or under an acreage. The petitioner has not necessarily provided information about whether 4820 South Rogers Street structure is safe for residency. The State of Indiana has not issued any documentation for this structure in the floodway. It does not have an Elevation Certificate, nor has it been inspected for compliance with Chapter 808. Since the structure was considered pre-existing nonconforming it had not met the standards to date. However, the alterations to 4830 South Rogers Street has initiated the discussion of compliance for this structure. If this variance is denied the petitioner will be required to remove the structure from the lot by relocation or removal. If removal is pursued using a demolition permit through the Monroe County Building Department state permits and a local Floodplain Development Permit will be required. Included in your packet are 6 letters of support that have been received. They are under the last attachment.

Clements: Does anyone have questions for Ms. Creceilius or any other member of staff? Mr.

DRAFT

Daley?

Crecelius: Just one moment, if that is ok. Staff is recommending denial for VAR-23-7 for the Use Variance for a Detached Accessory Dwelling Unit of Chapter 802 and the recommended motion conditions, or reasoning is that the petitioner has not demonstrated unnecessary hardship as there are several permitted uses under the RE1 zoning district and therefore a denial of this Use Variance would not effectively deprive the parcel owner of all reasonable economic use of the parcel. The request for this Use Variance is a self-created hardship because the petitioner did not seek out prior permits to initiating construction on this site and that the petitioner has not provided information about whether 4820 South Rogers structure is safe for residency. By raising the structure adjacent it is implied that both structures on the lot are vulnerable to flooding and should be brought into compliance. If denied, the petitioner will be required to remove either 4820 or 4830 South Rogers Street with all necessary permits bringing the property use into compliance by only having one residential structure on the property.

CASE NUMBER	DETAIL	RECOMMENDED MOTION
VAR-23-7	Use Variance for a Detached Accessory Dwelling Unit in Chapter 802	Denial

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

Recommended Motion Conditions or Reasoning:

- The petitioner has not demonstrated unnecessary hardship as there are several permitted uses under the RE1 Zoning District (See Exhibit 9) and therefore a denial of this use variance would not “Effectively deprive[d] the parcel owner of all reasonable economic use of the parcel.”
- The request for this use variance is a self-created hardship because the petitioner did not seek out proper permits prior to initiating construction on the site.
- The petitioner has not provided any information about whether the 4820 S Rogers St structure is safe for residency; by raising the structure adjacent, it’s implied that both structures on the lot are vulnerable to flooding and should be brought into compliance. If denied, the petitioner will be required to remove 4820 or 4830 S Rogers St with all necessary permits.

QUESTIONS FOR STAFF – VAR-23-1 – Cassidy

Clements: Ok, any questions for staff?

Daley: I do have a couple of questions. First of all, had the petitioner not elevated the other building on the property these DADU’s standards would not apply because it was pre-existing? That’s a question.

Crecelius: That is correct.

Daley: With that being said, you had mentioned that you did not feel, staff’s opinion is that the economic hardship has not been met and I believe you said there are many other uses for the

DRAFT

property. Could you explain a few of those?

Crececius: If the approval of VAR-23-1 that in itself would continue to allow one primary residence on the property.

Daley: I'm sorry, could you say that one more time?

Crececius: Sure. Even with you just approved VAR-23-1, that in itself is the use of a single-family dwelling on the lot is permitted.

Daley: Right but this Use Variance is for the other structure.

Crececius: Correct.

Daley: So, what is another use for that other structure that is on the property that you mentioned that there were many others?

Crececius: It is not the use of the structure it is that the use of the property already has 2 dwellings and with the approval of the last variance where it is already can have a use that is permitted under Chapter 833.

Daley: So, you are saying there are many other uses of the property but there are no other uses of that structure that you could tell us.

Crececius: The structure could be relocated. It would have to have proper building permits and a floodplain development permit and of course, have to be relocated to another property.

Daley: Would that not in its own be the definition of an economic hardship?

Crececius: We are looking at a specific definition of hardship within the zoning ordinance.

Daley: Exactly. Ok.

Clements: Any other questions for staff? Mr. Loftman?

Loftman: I am looking on page 23 of the report and it has got in red, DADU must meet current standards of residential, building, mechanical, electrical, energy...

Crececius: I'm sorry, Guy. You are very hard to hear right now.

Loftman: I am sorry I don't know why I am struggling with my microphone. Number 2, the DADU must meet current standards of the residential, building, mechanical, electrical, energy and environmentally critical area codes. Before the building was raised are there specific failures to meet standards that we know of?

Crececius: There is no evidence supporting either for or against it. But now because that pre-

DRAFT

existing nonconforming status is lost it has to show compliance.

Loftman: Ok. So, it was fine before the building was elevated and then it was not unless it is proved.

Crecelius: Correct.

Loftman: Do we know anything about the sewer connection or septic connection?

Crecelius: It is my understanding that it is the petitioner's intent to connect both residential structures if this were approved, to sewer as connection to sewer is a requirement for 4830 the house to the south.

Loftman: So, sewer is available for this structure?

Crecelius: It potentially could be, and I would like the petitioner to state whether or not they will connect both or not.

Loftman: Ok, thank you.

Clements: Ok. I can't see Ms. Owens if she has a question.

Owens: Nothing from me. Thank you.

Clements: Ok, thank you. If there are no more questions for staff, Mr. Cassady if you would like to speak to us about this particular DADU unit.

PETITIONER/PETITIONER'S REPRESENTATIVE – VAR-23-1 & VAR-23-7 - Cassady

Cassady: The DADU is the pre-existing nonconforming residence that we reside in. I will address the sewer thing first. Permitted through the sewer for it being installed. It was permitted under G20-2000326-011B by Troy Pal, Senior Project Commission with the City of Bloomington. That sewer itself is to be connected. It is across the street.

Clements: It is adjacent.

Cassady: Addressing the aspect in regard to the hardship. It is in a floodway. It is pre-existing nonconforming and given the circumstance that you graciously approved us to be able to go ahead and rebuild the residence to make our primary residence doing anything to this one at the present moment other than living in it would be economically difficult to do. Living next door to where you are working on it since I will be the one doing the work is very beneficial. The other aspect that we are doing is I showed you the tanks previously. We are going to run the runoff from this one in that so that we don't have additional runoff. The residence, the other, it is one residence, one lot. The habitually about getting an inspection. Now, the county does not have a neighborhood or a rental or a compliance on a residence. I checked to find out who could. I checked also with the individuals who do home inspections. They do home inspections but that

DRAFT

just says to sell it not to make it habitual. I talked to 3 of them and none of them will say it is habitual, but we will tell you what it is from a sales standpoint. Now, in order to identify the habitability, I would like to pass some photos out. There is about 7 there. At the present that is our home. I did not put it in the packet because once it becomes the packet then I have just shown the entire interior of the residence of which we are living. It is not elaborate, and it is not fancy, but it is home and putting it out where click on it and say, oh, they have a sunflower pillow. It just did not seem like the right thing to do. So, I thought I would bring the packet. Consequently, on the hard shot it is in the floodway. It is a pre-existing nonconforming historic structure. It is unable to be permitted. There may be some uses but I don't know what they are other than to leave it where it is, live in it and make the next one right. Fix this one up so that in the future guys as I said kids are not coming back but at some point, I am going to need help. I wish I could say that I did not. But at some point. I am not leaving, and somebody is going to have to help me. It is just reality. That is part of the consideration of this, and Anne was very forthcoming in regard to you do a DADU, this could be a way to do that. She was helpful. Rooftop structures, the runoff, then residence. One lot is in the floodway. I do not know what we would do. Other than that, I provided the pictures and there is no interference with pre-existing. The end result comes down to I am just trying to make the community safe and look good. Because when we are out nobody will remember. Forgive me and you may remember Clear Creek when it had all the trains.

Loftman: I do.

Cassady: But it was not always pleasant with the creosol plant and these items that occurred. When we are done and it is put back as a community and people are walking down the trail and saying this is cool, they won't know who we are. Nor will they care, and we don't care. But when you get that aspect of preserving those rural communities that provide that sense of community that is what we are about. Sense of place is based on the community of people that are there and if you quit caring that is when things go down. When they go down, they may never come back, and you look at it and when we drive through, and we see strip malls and things of nature that don't have that character but just drive through like any other community. Bloomington and Monroe County has been fortunate since it was founded to have character whether it be Bloomington, Harrodsburg, Elkinsville, unless you knew where the plaque was you wouldn't know. But we have those senses of community that we take pride in, and we are just trying to rebuild the Clear Creek area and stay in it. I apologize for my passion, but it is real. Long-term, no one will remember.

Davidson: May I ask you a question? Do you have water in the residence you are now living in?

Cassady: No.

Davidson: It has not gone past the first house to the second house is what you are saying.

Cassady: Well, the basement was our issue that we ran into. This other one it came down the side and goes down the side of it and goes around but it has not been in the house or the crawl space. The other one we went through multiple sump pumps, and it just never quit.

DRAFT

Clements: Could you explain to me, I am sorry Mr. Daley, but could you explain to me about the drainage from the detached accessory dwelling unit to the main house how you plan to achieve that?

Cassady: The intention will be to connect the guttering and then we will bring it into a single pipe that when those tanks will be all, well, I have got the holes drilled but I have been doing nothing since the stop work order. I stopped. They connect together. So, there is 5, 750-gallon tanks. Any water that is coming off the runoff, which used to just go straight to the creek and again given the geographic area if you familiar with the confluence when we have West Clear Creek and East Clear Creek, one starts at Jordan, one starts at Spankers branch up here. When they confluence up there that is what creates some of the flooding in the area because they come together. If we keep that runoff down into a storage area and then it releases slowly it works out. So, what now has been coming off the roof that would go there will be piped in off the gutters, go into the tanks and then be able to be held and then quite frankly be utilized to irrigate with natural water instead of chlorinated.

Clements: Thank you for explaining that. Mr. Daley?

Daley: The use for this structure afterwards, I am not clear?

Cassady: At the present moment what it will be used for now is its ours. It is our place where we stay and then after that it will sit there for either a low cost rental because the house I elevated we rent for \$375 a month.

Daley: Long-term rental?

Cassady: It will either be a long-term rental but more than likely it will be there and correct me if I am wrong, for the usage of our children when they come.

Daley: In-law suite or long-term rental, that type of thing. Great, thanks.

Clements: Does anyone else have any questions? I think Ms. Owens has a question.

Owens: I have had my hand up for quite a while. Thank you. I would like to ask Mr. Cassady why he didn't go for the permits?

Cassady: I just raised it because the aspect of what it was and I thought, ok, I can raise it up, see what I got, and I didn't really think about it until such time as I got it up so I could stop the problem. At that point it was a, what would you consider that, a novelty for individuals coming by.

Owens: I agree. It looks like something built on an island in the south pacific actually. To me by raising the house you demonstrated that you knew about flooding and yet you just said you didn't know about flooding.

DRAFT

Cassady: I knew my basement had an issue. I knew it needed to be elevated. What I didn't know was the aspect of the floodway and what the consequences of lifting something up was going to be. Full disclosure in regard to it, do know who Bobby Helms is? Do you remember Bobby Helms? I lifted and moved his house and did a very similar thing 20 years ago, so I didn't think anything about it. At the time I was trying to save things and I didn't even think about the consequences of the water way at all. I didn't even know about it until such time as it was demonstrated to me by the Floodplain Administrator and the Planning Commission.

Owens: Thank you.

Cassady: Zoning, yes. Floodway I had no idea. But that doesn't excuse me.

Clements: Thank you Mr. Cassady. Ok, we will turn now to members of the public and those who are here or online or on the telephone to speak in favor of this petition. You will have 3 minutes. Welcome back Tamby.

SUPPORTERS – VAR-23-1 & VAR-23-7 - Cassady

Wilke-Cassady: Hi, there. Its me again. Tamby Wilke-Cassady. I just want to add that Randy and I really believe in repurposing things. We built our other house from a lot of repurposed items. We value something existing and what it can be and serve to people so that we do not keep using so many resources in our environment. We think that saving another house is providing another place for people to live. It is reasonable in price and again it is an example of how we can save from building a new house somewhere, a new development somewhere else in the county. We think that is really important. We think it is important to redevelop lands that have already been used for something else and they are underutilized. We just chose this as our home. We like the location, and it is home. Thank you so much.

Clements: Thank you. Is there anyone else in the public who would like to speak in favor of this petition? If so, come to the microphone, raise your virtual hand on zoom or press *9 on the telephone to be recognized. Is there anyone that would like to speak in opposition to this petition? Please come to the podium, raise your virtual hand on zoom or press*9 to be recognized. Staff if you see anyone, let me know. Then I bring it back to the members of the Board of Zoning Appeals for further discussion and/or a motion.

FURTHER SUPPORTERS - VAR-23-1 & VAR-23-7 – Cassady: None

REMONSTRATORS - VAR-23-1 & VAR-23-7 – Cassady: None

ADDITIONAL QUESTIONS FOR STAFF – VAR-23-1 & VAR-23-7 – Cassady

Loftman: Well, let me be frank here. I live on the same block. It is a great big county block that these properties are on, and it is also the same block Tamby grew up on. I have known here since she was a teenager, but I never had any professional relationship or anything with their family. I have lived in this house for 46 years, no 48 years and Clear Creek was one of the saddest little skeletons, corpses of a community that you could live near and drive by every day. Then Randy

DRAFT

and Tamby said love your neighborhood. They put up this sign that was sweet and they have done more for this community, certainly more than me in the years I have lived there. This is one more step in making it better. One of the things that demonstrates character of a community is continuity of structures. I owned the Morgan House, a historic building for many years and I am a strong believer in not tearing things down when we need to and preserving things. Our house was built in 1927. This meets my standards of saving things that can be saved and improving the community with what we have already granted and I am comfortable with saying this is in the county interest and I am satisfied that the sewer is going to be properly handled, that there is, the building does look habitable to me. I assure you I have lived in less habitable places in my younger days. So, I move to approve this and let me get back up to page...

Jelen: Guy, I just have one comment in general from staff if we can. Either before you make a motion or after you make a motion, I would like to make a comment about it.

Clements: yes, please make your comment now.

Jelen: If there is a consideration for approval staff would like to have the BZA consider some conditions associated with it. Do note that the structure that we are talking about, 4820 South Rogers Street is in the floodway so with the approval of this variance you are allowing that residence to maintain in the floodway for perpetuity. As they are requesting it there would be no improvements made to that structure that would meet anything that would be required in Chapter 808. We do have some conditions that we would like you to consider but if the petitioner would like to respond to some of those conditions, we feel that might be necessary as well. Anne has them on the screen and we would like to have you consider that the existing home addressed as 4820 South Rogers Street apply for an Elevated Abode structure through DNR and receive a Floodplain Development Permit and also connect to sewer, confirm to connect to sewer.

Daley: Can I ask you a question on that? Sorry, Madam President, may I be recognized?

Clements: Yes, go ahead.

Daley: So, you are asking if we do approve this that we insist that the structure get put on stilts, essentially?

Jelen: Correct. I understand that the 2 structures that are there existing...

Daley: I am sorry, you are shaking your head one direction and Tammy is shaking her head in another direction.

Behrman: There are several designs to consider. You don't have to elevate that high. It could be just a matter of a foot or two and make sure you have the proper flood vents on the structure. Whatever makes it a safer structure so that we don't have that risk of hydrostatic pressure that builds up that could break the foundation and allows for a quicker recovery of the structure with flood proof material, flood resistant materials.

Clements: I would like to ask Mr. Cassady if you would be so kind as to return to the podium. If

DRAFT

you are asked to elevate this, would you prefer to consider it and request a continuation of this petition for another hearing, another month, or are you ready to commit to elevating the structure.

Cassady: The thing I can commit to, the sewer no question. The elevation in regard to it, that's a slippery slope at this present moment because I am going to someone else. I am happy to put the flood vents in. No issues. The hydrostatic issue that Tammy is referring to and if we go back to the prints on the other, there has to be a certain square inch opening under a foundation, so you don't create hydrostatic blowout if it floods. So, I am happy to put the flood vents in but at this point since I have elevated one, already had circumstances there, I don't want it to blowout, I don't want it to flood. I am happy to put in the flood vents but to commit to elevating it at this present moment when I am living there, where do I quit? Sewer is good. Happy to do flood vents. Elevation at this present moment, I don't know.

Clements: Is Ms. Thetonia online? Are you here? Is Kelsey available? To staff...

Owens: I do not see her online.

Clements: Pardon me?

Owens: I do not see her online.

Clements: Would the flood vents be satisfactory for hydrostatic pressure release?

Behrman: That is just one step to make a structure more resilient so that when a new event comes, it can recover quicker. There are other things that one can do to make sure that the foundation is solid so that it won't shift during those flood waters coming through. 808-5 lays out numerous things that can be to make sure that the house maybe meets that first-floor elevation for flood protection grade and that first step would be to apply for an elevated abode. From there they would apply for a flood development permit through us.

Clements: Mr. Cassady?

Cassady: The structure as it is right now has the opening, already has the pre-existing openings from a standpoint of what DNR and FEMA requires, would take care of the adequate openings to keep the static pressure from occurring.

Clements: And you don't experience flooding in that home like you do in the other?

Cassady: No.

Clements: Ok. Or did in the other before you elevated it.

Behrman: I have one follow-up question. Have you had an Elevation Certificate done for that structure? Does it meet flood protection grade for the first floor? Have you done that before? We are kind of clueless. We don't know where it is at with where it is.

DRAFT

Cassady: I am happy to go out and have, I have already got the elevation established so let's look. Let's look rather than second guess it. I can confirm without a question there is adequate openings in that foundation to meet and exceed the requirements of the square inch openings that is required for our static pressure issue.

Daley: Mr. Cassady, you said you had an Elevation Certificate?

Cassady: There is not an Elevation Certificate for that particular house because I have already got an Elevation Certificate for the other one and didn't forgo any additional one until we saw where the rest was going. I will tell you I am blessed and fortunate that I have been able to have the economic ability to be able to do that. That Elevation Certificate that Ms. Behrman is referring to was \$3,650.00.

Daley: Oh, they are pricey.

Cassady: That was for the one that is elevated. Consequently, I have not went and done an additional one on there because I didn't know if I was going to have to tear it down. We can shoot. We can go out with the laser. I can get Bynum Fanyo, one of the engineering firms here in town to go out and put a grade mark because we know where the elevation is because we have done the elevation certificate for the abode and the other one sits twenty-five feet away.

Clements: So, it is pretty similar.

Cassady: It is very, and I am happy to show everybody where it is so we don't have an issue. I just know that the elevated abode going through the permitting process and all of the rest of it will delay the aspect of do I stay, will I have to move out. Can I finish one before we go and do anything to the other? I am ok with number two, and I will make sure there is enough square inches opening in there to meet that, but I can't agree to go through the other at the present moment.

Clements: Thank you, Mr. Cassady. Ok, further questions from members?

Daley: Tammy, can I ask you another question? With the new standards it is all AE? Is that correct?

Behrman: Yes, correct.

Daley: Thank you.

Clements: Any further questions?

Davidson: I just wonder if this should be delayed for a month so that you can do those last checks that you are concerned about and work on what will satisfy both of you, everybody in terms of that second property and the flooding concerns.

Behrman: An Elevation Certificate would provide some information to see if we do have the

DRAFT

lowest flood elevation that meets compliance with that base flood that we would see there. As far as sometimes that may be just one piece of information and there may be more things required. So, it would be really up to you if you wanted to. It is up to you. I would like to see, for planning for 100 years from now, for that structure to stay, I would like for it to be a safe structure, especially since we are going to have a rental situation here. Someone will be living in one of those 2 structures and there will be a renter in the other one. There are flood waters that come through here. We know it. We have seen it. Cars can flood. It can be a dangerous situation. We have had a person just up the road that was injured during the 2021 event. It is just maybe thinking about it in terms of safety and that more resilience like are they going to have to replace the carpet every time. Are they going to have to deal with other aspects of flooding whereas if you do it right, right now then at least you have a bit of a more safer, more resilient structure.

Clements: Mr. Daley.

Daley: it is interesting that you talked about one hundred years because it has lasted 100 years. In addition to that had the petitioner not gone through to find ways to protect these homes this wouldn't even be an issue. It would still be there for one hundred years as-is. The petitioner seems to be willing to meet halfway.

Clements: Here is where I am coming down. I don't know if Ms. Owens had a question or a comment. But the way I am looking at this is that the request would improve the welfare community. That it doesn't affect anything in a substantially adverse manner. That the need for the variance arises out of really peculiar circumstances involving 2 houses, the combination of 2 lots. The elevations can't be that much different than the one for which they already have a certificate and that there would be unnecessary hardship and that this is a focused development in a designed community, one that they are also very fundamentally involved with building right across the street. To me I feel that they have a specific plan. Yes, they found themselves in a circumstance that they did not understand or anticipate as far as the flood way is concerned. But once they became aware that they did everything that they could to investigate it and to work with staff and to remediate the adverse impacts of the water. Now, I would like to hear from my colleagues on this board how you feel about what I just said, if you are in agreement, disagreement or if staff had a major objection, I would like to know that as well. Yes, Mr. Loftman.

Loftman: Let me say, elevating the house improved the floodway in Clear Creek. Leaving this house as-is doesn't change the floodway. The net is gain. Mr. Cassady has presented sworn evidence that there are sufficient opens to relieve hydrostatic pressure as it might occur. He has already satisfied to his understanding that requirement. I am not willing to put in my motion that it be elevated. The net affect is to improve things. If the net affect is to improve things and conserve things, I am comfortable with saying we should approve it for the very reasons that you said with the condition, which has been agreed to that it be connected to the sewer. That is critical. I think I made a motion.

Davidson: I think you did.

DRAFT

FURTHER QUESTIONS FOR STAFF – VAR-23-1 & VAR-23-7 - Cassady

Loftman: **To approve it and I add to the motion the condition that it be connected to sewer.**

Daley: **Your motion, I am assuming is based on your believe that this meets all of the criteria in 812-5, A through E?**

Loftman: **Yes**, which were recited by our Chair, yes.

Loftman: Is there a second?

Davidson: I will **second** that.

Jelen: Ok, it has been moved and seconded to approve VAR-23-7, Cassady Use Variance for a Detached Accessory Dwelling Unit based on Chapter 802 and this is an approval based on BZA revised findings as stated in the testimony, with the condition that the applicant/petitioner connect, approve connection to sewer to the structure. A vote in favor is a vote to approve the variance. Dee Owens?

Owens: No.

Jelen: Pamela Davidson?

Davidson: Yes.

Jelen: Margaret Clements?

Clements: Yes.

Jelen: Skip Daley?

Daley: Yes.

Jelen: Guy Loftman?

Loftman: Yes.

Jelen: Ok, the petition is approved 4 to 1.

The motion in case VAR-23-7, Cassady Use Var. to Detached Accessory Dwelling Unit in Ch 802, in favor of approving the variance, with findings as amended, with condition as stated in motion, carried (4-1).

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NEW BUSINESS

3. VAR-23-4 **Bloomington Self Storage Buildable Area (Special Flood Hazard Area) Variance to Chapter 804**

One (1) 7.49 +/- acre parcel in Van Buren Township, Section 12 at 2450 S Curry PIKE, parcel #53-09-12-300-023.000-015.

Owner: Curry Pike Storage LLC

Zoned LB. Contact: dmyers@co.monroe.in.us

BOARD ACTION: Clements introduced the petition.

STAFF ACTION:

Myers: Thank you. I did receive a message from our Floodplain Administrator, who relayed a message from one of the **petitioners in that they will be seeking to continue this petition this evening to the next meeting, which would be the May, I will get the date here, May 3rd.** They have requested a continuance. It is now your choice to either hear the petition as it is tonight or go with their request of a continuance.

Clements: is there any discussion about the request for a continuance?

Loftman: Is there anybody in the audience that is here to speak about this? Mr. Beggs is willing to speak to this so I would like to hear before we decide that.

Clements: Yes, Mr. Beggs.

PETITIONER/PETITIONER'S REPRESENTATIVE – VAR-23-4 – Bloomington Self Storage

Beggs: Good evening. Bill Beggs, Bunger and Robertson here on behalf of the petitioner. We understand that there has been some delay in the MS4 Coordinator's ability to review the LOMAR approval that was received from FEMA I think February 21st or thereabouts, February 23rd. So, for that reason we thought it would be helpful to the staff to be able to let the MS4 Coordinator have a chance to review FEMA's decision to have amended the map and of course you have plenty of record that the DNR has also weighed in, in favor of this. But we understand the MS4 Coordinator has not had a chance to review this yet.

Loftman: I would point out that Mr. Beggs used to live on the same block as Tamby Wilke grew up on and was the last property he was on. He doesn't anymore but he was a good neighbor, **so I move that we approve.**

Clements: But we first must hear if there is any public opposition for the behalf of the Clear Creek community. Is there any member of the public who would like to speak in favor or against the request to continue this to the May meeting of the Board of Zoning Appeals? If there is none, then you made a motion, Mr. Loftman.

Jelen: There is one person.

DRAFT

Clements: Mr. Josh Rogers if you can unmute yourself?

Rogers: Thank you. This is Josh Rogers with American Structure Point. We submitted the initial application for the variance. I just wanted to second what Mr. Beggs had said. Based on the staff report that was available for this variance, with the MS4 Coordinator not having the opportunity to review the LOMAR materials that had been submitted, we would like to request the continuance to next month so that the MS4 Coordinator can review the LOMAR and provide any sort of feedback in that time. Thank you.

Thank you, Mr. Rogers. There is a motion on the table and if there is a second then we can move on.

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

Jelen: It has been moved and seconded to continue VAR-23-4 to the May 3, 2023, Board of Zoning Appeals meeting. A vote in favor is a vote to continue this case to the May 3rd meeting. Pamela Davidson?

Davidson: Yes.

Jelen: Margaret Clements?

Clements: Yes.

Jelen: Skip Daley?

Daley: Yes.

Jelen: Guy Loftman?

Loftman: Yes.

Jelen: Dee Owens?

Owens: Yes.

Jelen: Ok, motion carries 5 to 0.

The motion in case VAR-23-4, Bloomington Self Storage Buildable Area (Special Flood Hazard Area) Variance to Chapter 804, in favor of approving petitioners request to continue case to May 3, 2023, BZA Meeting, carried unanimously (5-0).

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NEW BUSINESS

- 4. VAR-23-10a **Legacy Homes & Farms Minimum Lot Size Variance to Chapter 804**
- 5. VAR-23-10b **Legacy Homes & Farms Minimum Lot Width Variance to Ch 804**
- 6. VAR-23-10c **Legacy Homes & Farms Buildable Area (15% Slope) Var. to Ch 804**
One (1) 0.4 +/- acre parcel in Indian Creek Township, Section 3 and 4 at
7017 S Harmony RD, parcel #s: 53-10-03-200-015.000-007 &
53-10-04-100-017.000-007.
Owner: Pendleton, James Thomas II
Zoned ER. Contact: dmyers@co.monroe.in.us

BOARD ACTION: Clements introduced the petition.

STAFF ACTION:

Myers: Thank you. Aright, this is VAR-23-10 and there are 3 variance petitions wrapped up into this one request. It is located at 7017 South Harmony Road. It is in Indian Creek Township, Section 3 and 4. The petitioner is proposing to construct an approximately 1,400 square foot single-family residence with a walkout basement located on this property. Before 2015 the subject property contained a manufactured home and sometime between 2015 and 2016 that structure was removed. The property has sat vacant since that time and the property consists of approximately 0.4 acres. This is under the minimum lot size requirement for the Estate Residential zone which is the zoning district for this property. Additionally, the property is on 75 feet in width. The minimum lot width requirement for the ER zone is 100 feet. Finally, the property exhibits slopes that are greater than 15% in most areas on it. According to Chapter 804, slopes greater than 15% are classified as nonbuildable area unless a variance is approved by the Board of Zoning Appeals. Based upon the petitioner's certified plot plan that is an exhibit in your packet, Exhibit 4, the proposed new residence will encroach into these areas greater than 15%. I will note that through conversations with the petitioner, it was relayed that the petitioner's engineer had recommended the location of the structure into the sloped area because a new presby system will be required and needs the remaindering buildable area space that is just south of the proposed location for the residence. Here we have the location map as well the site conditions map. Please note that these parcel lines that are shown here do appear to be off. They are pulled from Elevate GIS data. That isn't always 100% accurate. We do have a certified plot plan in this packet that has the surveyed property lines, which are the most accurate for this property. Again, some of these lines are a little hard to, they aren't depicted with 100% accuracy, but it does help you at least get an idea of the current topography and just the landscape of the area. So, it is right in between these 2 existing homes. There is a lot 75 feet in width. Here we have some photography from the ground. You can see the old mobile home, manufactured structure in the distance there. That has since been removed. It is back in here where the curser is in the shaded area of the trees. Here we have the letter submitted by the petitioner, Mr. Rick Deckard, as well as the owner consent letter. At the time of the filing the petitioner was not the owner of the property, hence the need for a consent letter. In both of these letters it is articulated what the intention is behind this petition in that it is to construct a single-family residence. You will note in the owner consent letter there is language about a driveway easement resolution serving the neighbor's driveway. But based on the certified plot plan that you see here, and I will click again to zoom in, there is no existing driveway easement issue. Some of the Elevate parcel lines appear to include this driveway that is to the neighbor to the north as part of the property,

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the subject property. However, that is clearly defined here that that driveway is not on the property. It is not an issue with this petition. I am going to leave this on the screen for a little while longer. The hatched areas are greater than 15% in slope. So, you will note that the engineer here has indicated a new presby septic bed in most of that area that is buildable. Then the proposed residence back here, 1,400 square feet with a walkout basement does encroach into these 15% slopes. The location of the proposed home will abide by side yard setback, rear yard setback and front yard setback. But it is those lot dimensions that require the variance approval. Here we have a plat of a survey that was done by Mr. Kevin Potter. Ok, so that brings me to the recommended motion from staff. Overall, staff recommends approval of all 3 variances. Approve the Minimum Lot Size. Any new development on the property would first require a Minimum Lot Size Variance. The property contained a single-family residence in the recent past. Approve the Minimum Lot Width Variance citing the similar rationale. Any new development on the property would first require a Minimum Lot Width Variance in that the property contains a single-family residence in the past and finally, approve the Buildable Area 15% Slope Variance citing that practical difficulties have been met. The remaining buildable area on the petition site is needed for a new septic system and therefore cannot be utilized for the proposed residence. I will now take any questions.

CASE NUMBER	DETAIL	RECOMMENDED MOTION
VAR-23-10a	Minimum Lot Size Chapter 804	Approval
VAR-23-10b	Minimum Lot Width Chapter 804	Approval
VAR-23-10c	Buildable Area (15% slope) Chapter 804	Approval

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

Recommended Motion Conditions or Reasoning:

Approve Minimum Lot Size: Any new development on the property would first require a minimum lot size variance. The property contained a single-family residence in the recent past.

Approve Minimum Lot Width: Any new development on the property would first require a minimum lot width variance. The property contained a single-family residence in the recent past.

Approve Buildable Area (15% Slope): Practical difficulties have been met. The remaining buildable area on the petition is needed for a new septic system and therefore cannot be utilized for the proposed residence.

QUESTIONS FOR STAFF – VAR-23-10a, VAR-23-10b, VAR-23-10c - Legacy

Clements: Do members of the Board of Zoning Appeals have questions for staff? Mr. Loftman?

Loftman: I am usually pretty hesitant to allow any construction in the 15% area. Now, this isn't close to the lake. Is it close to any water ways that we would be concerned with?

Myers: I don't believe so. Let me do a quick search here. There are no noted hydrologic features

DRAFT

nearby, meaning streams or lakes or ponds. I can pull this up on my screen as well. It is not in the Lake Monroe Watershed.

Loftman: Almost the entire structure is going to be in this 15% zone. So, tell me why you think that is ok when I usually don't, usually would expect a no from Planning and we are getting a yes. I am not saying I am against it. I just want to make sure I understand what the logic is.

Myers: Sure, that is a good question. So, yes, generally speaking the strict application of the zoning ordinance would not allow for any type of encroachment into steep sloped areas, but there are some rare situations where it seems like all of the factors align, if you will. Being that there is no other location on the property that wouldn't require additional variances. Certainly, there is area, if I could go back to the map, there is some area that is buildable in the front portions of the property but then you run into front yard setback issues. Then of course initially staff felt that it would be a recommendation of denial until there was further discussion about the need for this septic bed and that area would require, would be taken up by the septic system itself.

Jelen: Drew, they are showing that there is a 45 foot from center line right of way on their plot plan that is on the screen, so we would not be able to grant a variance for that area of right of way that is not on their property. We can't put a septic there. We can't put a house there and if they have to replace the septic system the Health Department does not have as easy of, I guess I should say, I am not sure that they have a variance process for a septic to go into a nonbuildable area. They would not be able to put the septic elsewhere on the site that met buildable area. Those 2 areas take up the only buildable on the lot.

Loftman: I think it is the 45 feet that I hadn't clued in on that makes the front of the lot not available for building. Lord knows I don't want a septic system in anything over 15%, that is enough of a concern. But it looks like this is a lot of area and without this it becomes an unusable property which is one of our more important concerns. Thank you for clarifying that for me.

Clements: I am going to recognize first Ms. Owens and then Mr. Daley. Ms. Owens, your hand is raised.

Owens: Yes, ma'am. Thank you. I have driven past this property many times and I can tell you that the old trailer that was on it was quite an eyesore. It is so narrow and so sloped I don't see how it could ever be used for anything without a variance, period. Because it just goes down. If the houses on either side are built up pretty close to the front so putting the house back a little bit would probably feel less crowded to the neighbors, I would think. I am glad to see somebody is trying to use this property in a good way.

Clements: Thank you, Ms. Owens. Mr. Daley.

Daley: Quick question to staff. Within your recommendation for approval there is a condition, I am assuming, for a new septic and all of the approval processes for that. Is that correct? I didn't see that.

Myers: One second, let me pull that up. We don't have a condition set for that. But they have

DRAFT

been in contact with the Health Department and in my conversations with the petitioner the Health Department also recommends a new septic system.

Daley: Recommends, ok. But you are not offering up a condition.

Myers: That is certainly something that the Board of Zoning Appeals could request.

Clements: Ms. Moss, are you to represent the petitioner? Please sign in and then we will swear you in.

**PETITIONER/PETITIONER'S REPRESENTATIVE –
VAR-23-10a, VAR-23-10b, VAR-23-10c - Legacy**

Moss: Hi, Chelsea Moss with Abram-Moss Design Group.

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

Moss: Yes, I do.

Clements: Thank you.

Moss: Hi, I am here representing the petitioner as the Site Engineer for this project. As Drew outlined it is a small site with a lot of constraints. First off with the lot width. The lot size isn't too far off from other lots on that road. They are all smaller lots, and they are all fairly narrow. It is kind of inline. It is on the smaller end, but it is inline with those, so approval of those 2 variances does align with the overall community along Harmony Road there. As for the 15% slope, Drew outlined there, the front, or Jackie may have, the front is encumbered by the right of way and that was something that we weren't anticipating when we started in. I was planning on putting the septic up closer to the road. There is a flatter spot there but man, Harmony Road has a wide right of way down there. So, it really puts us as our only option is down the middle. The 15% slope limitation for septic is not a local requirement. That is a state code requirement and there is no variance to it. You just can't put anything from a septic perspective on steeper than 15% slopes. That limits us there. We can't move into that right of way that has to be acceptable for the county. So, our only option is to push that house all the way to the back. We have maintained all other setback requirements. In some ways it does help us. One of the issues with the 15% limitation is it actually makes walkout basements very difficult to build. You basically have to dig a hole to put a basement in. You can't do just the standard walkout on a natural grade. In this case, it will accommodate, the natural grade will accommodate that walkout really well and that is something that I and others have had discussions with Planning about in that being able to use that natural grade and not create a sump to do a walkout basement will be helpful for this structure as well. We are well away from anybody's water and the contractor will be using erosion control measures to maintain all of the silt and sediment on the site during that construction process and get everything well stabilized after construction.

Clements: Thank you, Ms. Moss. Do members of the Board have questions for Ms. Moss?

DRAFT

Moss: Thank you.

Clements: Thank you. If there are members of the public who would like to speak in favor of this petition, please come to the podium or raise your virtual hand or press*9 on the telephone. Yes, sir, if you would kindly come up and sign in and then I will swear you in. Then you will have 3 minutes. Would you kindly state your name and do you swear to tell the truth, the whole truth and nothing but the truth?

SUPPORTERS – VAR-23-10a,VAR-23-10b, VAR-23-10c - Legacy

Deckard: I do. My name is Rick Deckard, builder.

Clements: Rick Deckard, thank you and if you could be close to the microphone, it will help out wit the transcription and everything.

Deckard: Born here. Raised here. Will likely expire here. I am a long, long-time member of the community.

Loftman: I'm sorry, I am having trouble. Right into the microphone.

Deckard: Right into the mic, ok. So, with that said, if you don't need me to repeat, this home represents about 1,400 square feet. For all of the remodel contracts, barns, houses and various units that I have built, that is a number far less than what I have actually done in this community, one at time over about the last 60 years. Because I started with my father instead of being really good at sports, I was really good with a utility knife, hammer, staple gun, those kinds of things. At eight years old I sort of started here. My goal has always been to avoid this room and up until tonight I did a pretty good job of that. Chelsea certainly covered it well but the difference in myself and an awful lot of contractors is they are not on the site every day. I am. I arrive early in the morning. Generally, the going home time is at 5:30. That leaves very little time to go over and bother Drew and company, the Planning staff. When I do it has been pretty dirty overalls, but I do make myself a pest there. I need about 3 to 4 sites a year to stay busy and this would qualify as one of those sites. This is the mockup of the home that I would put on that site. It is narrow and a bit deep, but the site will accommodate this as sort of where we can drive into the middle or possibly the back of the home. With that being said, unless you have nay direct questions for me, I will be happy to take a seat and make myself more quiet.

Clements: Thank you, Mr. Deckard. Just one moment though. Do you members?

Daley: Just one thing, you will have to provide that photograph to staff.

Deckard: Ok, just leave this with them then?

Clements: Yes. It looks very nice from here. Congratulations. Are there other members of the community who would like to speak either in favor or in opposition to this proposal? If so, please come to the podium. Please raise your virtual hand or press *9. If there are none, we can move back to our Board of Zoning Appeals for further discussion and/or a motion.

DRAFT

FURTHER SUPPORTERS - VAR-23-10a,VAR-23-10b, VAR-23-10c – Legacy: None

REMONSTRATORS - VAR-23-10a,VAR-23-10b, VAR-23-10c – Legacy: None

**ADDITIONAL QUESTIONS FOR STAFF –
VAR-23-10a,VAR-23-10b, VAR-23-10c – Legacy**

Clements: The restrictions of the existing topography give us some good rationale for approving this petition as well as the fact that the engineer and the design firm and Mr. Deckard, himself, is making the slope a feature rather than a problem of the structure they are trying to build to the site specifically. So, if there is a motion to incorporate anything like that.

FURTHER QUESTIONS FOR STAFF – VAR-23-10a,VAR-23-10b, VAR-23-10c - Legacy

Davidson: **I move that we accept VAR-23-10a for Legacy Homes & Farms for Minimum Lot Size Variance to Chapter 804. I move also as part of that motion that we accept VAR-23-10b, also for Legacy Homes & Farms, Minimum Lot Width Variance to Chapter 804 and the third part of that I move that we accept VAR-23-10c, also for Legacy Homes & Farms, Buildable Area 15% Slope Variance to Chapter 804.**

Owens: I will **second**.

Clements: Wonderful and do you believe that all 3 criteria; A, B, and C of the standards for a design variance have been met?

Daley: Yes, she does.

Loftman: I would ask a friendly to include the conditions; that any new development on the property would first require a Minimum Size, well that is what we are doing. Ok, I am sorry. It looks to me like those conditions are what you are moving, so no need to repeat them.

Jelen: It has been moved and seconded to approve VAR-23-10a, VAR-23-10b and VAR-23-10c. That is for Minimum Lot Size, Lot Width and Buildable Area all to Chapter 804. This is an approval based on the findings and no conditions. A vote in favor is a vote to approve all 3 variances. Margaret Clements?

Clements: Yes.

Jelen: Skip Daley?

Daley: Yes.

Jelen: Guy Loftman?

Loftman: Yes.

DRAFT

Jelen: Dee Owens?

Owens: Yes.

Jelen: Pamela Davidson?

Davidson: Yes.

Jelen: Motion carries 5 to 0.

The motion in cases VAR-23-10a, Legacy Homes & Farms Minimum Lot Size Variance to Chapter 804, VAR-23-10b, Legacy Homes & Farms Minimum Lot Width Variance to Ch 804 and VAR-23-10c, Legacy Homes & Farms Buildable Area (15% Slope) Var. to Ch 804, in favor of approving all 3 variances, carried unanimously (5-0).

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NEW BUSINESS

7. VAR-23-11

Casey Shake Minimum Lot Width Variance to Chapter 804

One (1) 6.91 +/- acre parcel in Richland Township, Section 34 at 3144 N Smith PIKE, parcel #53-04-24-101-012.000-011.

Owner: Casey Shake DVM LLC.

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

BOARD ACTION: Clements introduced the petition.

STAFF ACTION:

Brown: Thank you. This is a request for 1 design standards variance which is Minimum Lot Width from Chapter 804. The purpose was to establish an agricultural structure at this location. Chapter 804 requires that a structure in Agricultural/Rural Reserve be located in an area of a minimum lot width of 200 feet. The proposed location for this structure, however, has a lot width of 132 feet. There is area of the same lot, however, where this 200-foot minimum would be satisfied. But the petitioner has said that location on the property is going to be used for hay and they do not wish to build there. The structure otherwise meets almost all design standards. Particularly, I want to point out the setbacks, the 50-foot setbacks requirement for a commercial structure in Agricultural/Rural Reserve zone. So, if approved the petitioner will be allowed to construct the agricultural building in their proposed location. If denied the petitioner will need to find another location for this proposed structure or perhaps even apply for a rezone. I just want to briefly go over practical difficulties, which is something that is often determined in whether or not a variance is valid for approval. Practical difficulties for variance purpose means a significant development situation that; A) arises from conditions on the property that do not generally exist in the area such as property conditions create a relatively unique development problem. B) precludes the development or use of the property in a manner or to an extent enjoyed by other conforming properties in the area. C) Cannot be reasonably addressed through the redesign or relocation of the development, building or structure and D) may not be reasonably overcome because of a uniquely excessive cost of complying with the standard. There was some discussion on whether in order to full satisfy practical difficulties a variance needs to satisfy just one or two of the practical difficulties; a, b, c and d or if it needs to satisfy all of them. We believe that the inclusion of the word “and” at the end C means that they are all grouped together and thus all need to be satisfied for practical difficulties to apply. Here is the letter to the Board of Zoning Appeals where Doctor Shake, the owner of this property expresses his desires for this. This is also included in the packet. Here is the site in question. The red box is the proposed location which does not meet the minimum lot width requirements. The blue box is s staff recommended location, which does meet the minimum lot width requirements. Here is the site map that the petitioner presented showing the location of the structure and the setbacks. As you can see it does meet the 50-foot setback standards for a commercial building. Here are simply the location map and the slope map. As you can see there is no nonbuildable area on the property. It is al well under the 15% slope. The photo on the left is taken as a view roughly where the proposed location for this structure is and the photo on the right is more of a general location itself taken from a further distance. Staff recommends denial of VAR-23-11 due to the lack of practical difficulties, particularly Item C as there are other areas on this lot that meet the design standards and below is just the definition of practical difficulty and its standards once more.

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CASE NUMBER	DETAIL	RECOMMENDED MOTION
VAR-23-11	Minimum Lot Width	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:

1. Staff recommends **denial** of VAR-23-11 due to the lack of practical difficulties, particularly item C, as there are other locations on the lot that meet the design standards.

QUESTIONS FOR STAFF – VAR-23-11 – Casey Shake

Clements: Well, I am just going to be the first one to ask questions. Going back to that photo of the hayfield, it looks as though the staff recommended placement of the pole barn would be right in the path of the tractor that would harvest the hay. The purpose of this particular field in this particular zone and district is that commercial cash crop, right?

Brown: This is intended for agricultural purposes. This is also located right next to a vet, so it is believed that is also intended to be a tool shed for that. As you can see from this image there is intended to be a walkway or driveway of sorts connecting it to the parking lot for the veterinary clinic.

Clements: I see. I see.

Brown: Oh, it is not part of the vet. I apologize.

Clements: Would the building be in the way of the path of the tractor that would harvest the hay? That is what it looks like to me with the proposed building site. With that being said, any other members of the Board of Zoning Appeals have questions for staff?

Davidson: It look that way to me too. All of us that have spent time on a farm know that square shape. The staff's suggestion of where it would be, that would be quite navigational. Unfarm like, thank you, Mr. Daley.

Clements: Any other questions for staff? If the petitioner or the petitioner's representative is here, please come to the podium, sign in, state your name and then I will swear you in and then we will all be introduced.

PETITIONER/PETITIONER'S REPRESENTATIVE – VAR-23-11 – Casey Shake

Shake: Casey Shake.

Clements: Thank you Mr. Shake. Would you please raise your right hand, and do you swear to tell the truth, the whole truth and nothing but the truth?

DRAFT

Shake: I do.

Clements: Thank you. You have 15 minutes.

Shake: Before we get started let me grab my other paperwork picked up the wrong one.

Clements: Ok, sure.

Loftman: Mr. Shake, if you would speak right into the mic that would help us.

Shake: Ok. Daniel, can you pull up the picture, please of that has the suggested lot versus the proposed lot? Yes, perfect. To answer your question about whether or not that would be in the path of the tractor, so this is being utilized currently for hay production. You can see what it utilized for hay based on the stripes. This area is narrow, and it gives people a place to walk their dogs. I keep that mowed and it also helps visibility on North Smith Pike. Exactly what I am proposing is an agricultural structure to store farm equipment. There is actually a structure that is over here on this property. That is 3130 that is leaking, and I am going to replace that with an improved and expand, give me a little bit more storage. As far as what is in that, there is a tractor, there's a bushhog, at some point in time, depending on the time of year there is a hay mower, a bailer. I also do row crops, so I store our seed trailer in there. That is what the building is going to be utilized for. As far as being utilized for the veterinary clinic, it is not. But anyway, I am planning on building it in the narrowest part, which is 132 feet wide. Initially my plans were to make it 36 x 48. I changed that so I could meet the side setbacks of 50 feet on each side. Basically, I can't meet the building width, the minimum lot width at the front if you use North Smith Pike as the right of way. However, based on the Monroe County Zoning Ordinance Chapter 801, page 5, a building line is a line that establishes the minimum permitted distance on a lot between the front most portion of any building or structure in the street right of way. When using North Smith Pike as a right of way I don't need meet the required minimum lot width. However, this property also extends back to 46. So, if you would consider the back side of the building the front side then I do in fact, go back to that previous image. Essentially, the back of the building meets the minimum lot width at the building line. So, considering the right of way from 46 it does comply with those standards.

Clements: That is creative.

Davidson: Creative, indeed.

Shake: I put some time and research into this.

Daley: Would you be willing to put a sign that says front in back?

Shake: Absolutely if that is what it takes, I will do that. I will do that. The other thing that I will mention is I am glad April 5th came here because ever since I have stuck that variance sign out there in the lot there has been a wind advisory every week in this area, and it is on its last leg. But relocating the proposed structure to an area where the actual front of the building or the building meets the minimum lot width or however you say it, looking at this picture I can say,

DRAFT

yes, this does make sense. But it does interfere with the hay production. Here is the other thing that you got to take into consideration, Daniel, would you go to the next photo? How about the next one? Maybe the next one? Ok, this one. It is hard to tell elevation from a picture. But this is the flattest area of the lot. Where the Planning Committee is proposing I put the structure we would actually have more change in elevation. I would actually be if I built it where I proposed it will actually be on a flatter area as opposed to a slope. From a practical and reasonable standpoint grass is better suited for a slope, meaning hay, and the building is better suited for flat ground.

Clements: That is very compelling.

Daley: I am sorry. Were you done?

Shake: I still got more. The original lot width on this was 132 square feet and it extended back. So, in I think it was roughly 2005, the individual that owned all of this property and established Town & Country Veterinary Clinic, he sectioned it off and whenever he sectioned it off then that extended the lot. Because originally it would have only been 132 feet and that of course that occurred prior to all of the zoning ordinances. The practical difficulties for variance purposes. A) arises from conditions on the property that do not generally exist in the area, i.e., property conditions create a relatively unique development problem. So, the lot is narrow. That is my development problem. B) precludes the development or use of the property or to an extent enjoyed by other conforming properties. Most of the properties on Smith Pike are less than 200 feet at the road and they all have structures on them. C) cannot be reasonably addressed through the redesign. So, if I relocate this building it essentially interferes with the use of the property, which is what I am after because it is used to produce hay. In this day and age farm ground is continuing to dwindle. I grew up on a farm. I still farm and my goal is to preserve the farmland. Again, back to the recommendation the Planning Committee to deny this action, I see their point from looking at it on paper, but it doesn't make sense considering the use of the property.

Clements: Thank you, Mr. Shake. There are members of the Board of Zoning Appeals that may have questions. I see Ms. Owens, who is online, she has her hand raised.

Owens: Thank you very much Doctor Shake and I go to tell you, you had me at flat. I am so tired of 15% slopes I could just choke. But I am sorry, I was being a wise guy. You just alluded to the staff made the negative recommendation because that is their job and that is how they are reading the ordinance and good. That is why we have staff. I think our job is to make it make sense when the rules don't seem to make sense or when they ought not apply in a particular way. I think that your presentation has totally convinced me that I will be voting for. I think you ought to keep it up front. That's all. Thank you.

Shake: Thank you.

Clements: We will be hearing from the public now. We will hear from members of the public who are in favor and are opposed to your proposal. If there is anyone opposed, you will have a 5-minute rebuttal. Unless there are further questions for Mr. Shake, you can have a seat and we will call you back if we need to, ok.

DRAFT

Shake: One last thing, I am keeping my setbacks from the neighboring properties, even mine and the neighbors to the north just to conform with the standards.

Clements: Thank you so much. Are there members of the public who are here, yes, are you in favor?

SUPPORTERS – VAR-23-11 – Casey Shake

Barber: After listening to the Doctor's presentation, I am in favor.

Clements: Ok if you would kindly sign in. State your name and I will swear you in.

Barber: Brian Barber.

Clements: Mr. Barker.

Barber: Mr. Barber.

Clements: Barber?

Barber: Like cutting hair.

Clements: Ok, do you swear to tell the truth, the whole truth and nothing but the truth?

Barber: I do.

Clements: Thank you, Mr. Barber.

Barber: I am one of the neighbors who live to the north of that property, close to Smith Pike. I can confirm what the Doctor said about the land being, having a significant upslope right where he is talking about. It is significantly flatter where he proposed to build and where the Board proposed to build. As long as the Doctor is able to keep the construction sounds to a minimum, I would fully support his right to build on his property where he chooses.

Clements: Thank you so much Mr. Barber. Are there members of the public online, I see a Mr. Dave Burnworth. His hand is raised. So, if you could unmute Mr. Burnworth. Mr. Burnworth, if you would kindly raise your right hand and do you swear to tell the truth, the whole truth and nothing but the truth?

Burnworth: I sure do.

Clements: Please talk to us about why you support this proposal.

Burnworth: We have used Doctor Shake as our vet for a number of years and really appreciate the care that he gives the animals, and he wouldn't do anything to harm the land or the animals.

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So, I think you should grant the variance for him. Thank you.

Clements: Thank you. That is a very nice, neighborly and sound endorsement. Is there any member of the public who is opposed to this petition? If so, please come to the podium, raise your virtual hand or press *9 on the telephone to be recognized. I don't see anyone. Coming back to the members of the Board of Zoning Appeals, if there further discussion and/or a motion? Please, Mr. Daley.

FURTHER SUPPORTERS - VAR-23-11 – Casey Shake: None

REMONSTRATORS - VAR-23-11 – Casey Shake: None

ADDITIONAL QUESTIONS FOR STAFF – VAR-23-11 – Casey Shake: None

FURTHER QUESTIONS FOR STAFF – VAR-23-11 – Casey Shake

Daley: I believe the one question that the petitioner needed to answer was Item C, and I believe he satisfactorily convinced me. I would like to propose that we accept his VAR-23-11, based on the satisfaction of the criteria in 812-6.

Clements: 801.

Daley: Oh, is that what it is.

Clements: 801, yes.

Daley: 801, then. How about that? 801, A, B, C and D, I believe are all met. I do have a question about that legal and grammatical thing. Maybe Mr. Schilling and I can have a discussion about the use of the word “and” later. But for the time being, I do motion hat we accept this based on satisfaction of all 4 criteria in Chapter 801.

Clements: Ok, is there a second?

Loftman: Second.

Jelen: It has been moved and seconded to approve VAR-23-11, Casey Shake Minimum Lot Width Variance to Chapter 804, and this approval is based on the revised findings by the Board to include the criteria under 812-6 and the Particular Difficulties definition under Chapter 801. A vote in favor is a vote to approve the minimum lot width variance with no conditions. Skip Daley?

Daley: Yes.

Jelen: Guy Loftman?

Loftman: Yes.

DRAFT

Jelen: Dee Owens?

Owens: Yes.

Jelen: Pamela Davidson?

Davidson: Yes.

Jelen: Margaret Clements?

Clements: Yes.

Jelen: Ok, the motion is approved 5 to 0.

Clements: Mr. Daley has to excuse himself, but we will still have a quorum.

The motion in case VAR-23-11, Casey Shake Minimum Lot Width Variance to Chapter 804, in favor of approving the variance, with findings as amended in motion, carried unanimously (5-0).

Skip Daley left the meeting at 7:39 pm.

NEW BUSINESS

8. VAR-23-12

Ronchetti/Johnson Buildable Area Variance to Ch. 804

One (1) 3.36 +/- acre parcel in Van Buren Township, Section 36 at 4465 W Tramway RD, parcel #53-09-36-300-012.000-015.

Owner: Johnson, Samantha; Ronchetti, Todd

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

BOARD ACTION: Clements introduced the petition.

STAFF ACTION:

Crececius: I will go ahead and get started. This is VAR-23-12. Here is a quick pictometry photo of the petition site. We are looking at a 3.36-acre parcel in Van Buren Township of Tramway Road. The petitioners are proposing to put a 2,280 square foot manufactured home within the DNR best available approximate Floodplain also known as the Special Flood Hazard Area. Chapter 804-4(E) states that any building or structure constructed after October 2, 2015, must be located within a buildable area. The following shall not be included in the buildable area which is Special Flood Hazard Area as specified in Chapter 808. Here is a staff generated site conditions map. As you can see the floodplain highlighted in a darker green and light green and steep slope present on the site. A little bit of background. The petitioner applied for a residential building permit in October 2022 to replace a manufactured home that had been recently removed from this site. The previous manufactured home was placed in 2018 and was issued an Improvement Location Permit by the Planning Department. The Zoning Inspector at the time that reviewed the permit and issued the ILP referred to outdated information regarding location of the Special Flood Hazard Area. The petitioners purchased the property in January of 2022 and removed the 1995 mobile home with the intention of placing a larger manufactured home in the same location. Upon submission of the residential building permit, R-22-1165, Planning Staff informed the petitioners that the original location of the previous home was with the SFHA and partially within the DNR Floodway per the best available flood data. Here is a close up of their certified plot plan. The petitioner has since obtained a certified plot plan and has filed for a Floodplain Development Permit, FP-23-2. An alternative location for the structure that is outside of the floodway but is within the approximate flood fringe was bee identified. The fringe is still considered a special flood hazard area under Chapter 808. The floodplain limits have been delineated on the petitioner's plot plan and states that the base flood elevation is 639.4 and they are proposing the lowest flood elevation of in order to meet the required regulatory flood elevation 641.4. As you can see on the site plan this area kind of identified as gravel was the original location of 1995 manufactured home with a septic mound system. The new location would be just crossing over the old footprint. Here is a closeup of the previous structure. It was a 1995 manufactured home that had a manufactured shed attached to it as an additional bedroom. Now I am just going to go through a few site photos. The petition site, we pretty thoroughly explored the property, and it is pretty constrained by steep slopes, rocky soils and floodplain on the south side of the creek. As we do when we consider a petition like this, we look for any possible relocation of the proposed structure to a better site and we were not able to identify an alternative location. Here is the certified plot plan just zoomed out a little bit more. As you can see this is the shape of the petition site. It is kind of an unusual shape. Property to the north, so

DRAFT

south of the creek, you can kind of see the grey that is slopes that are greater than 15 percent. We can see that the contours change, and the elevation would not be appropriate. Just a quick image of the petitioner's letter to the Board of Zoning Appeals stating that they would be compliant with what has been requested under floodplain development permit in Chapter 808. In summary, the site contains no other viable location for a residence. The petitioners will need to provide information to demonstrate to the Floodplain Administrator that they can meet the standards within Chapter 808. Currently the Floodplain Development Permit is unable to be issued at this time because we are just pending information and that is laid out in Exhibit 5, exactly all of the info that is needed. To go over what has been requested under the floodplain permit is just for a little bit more information to see what we are on, is that we are waiting for an installer with an active license for a manufactured home that is licensed per Indiana Code and actually we did receive proof today that this has been met. These are not conditions of this variance, just letting you know what they are still waiting on for the floodplain permit. The second one would be an establishment of a benchmark for flood protection grade which is 2 feet above base flood elevation by an engineer. The Elevation Certificate by an engineer and then written compliance to standards of Chapter 808, specifically those that are listed within Exhibit 5, which goes into things like anchoring, flood proof materials, etcetera. Staff's recommended motion for VAR-23-12, we recommend approval of variance for the Buildable Area Variance with the following condition;

- 1) Remove or submit permits (Building and Floodplain Development) for two unpermitted sheds located in the SFHA. Removal of structures OR permit applications must be submitted before the Residential Building Permit Certificate of Occupancy (CoO) will be released.

So, does not necessarily need the sheds to be removed or relocated but they need to have the permit process started before a Certificate of Occupancy could be released or the proposed structure. Does anybody have any questions?

CASE NUMBER	DETAIL	RECOMMENDED MOTION
VAR-23-12	Buildable Area Variance 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.

Recommended Motion Conditions or Reasoning:

Staff recommends **approval** of variance VAR-23-12 Buildable Area Variance with the following conditions:

1. Remove or submit permits (Building and Floodplain Development) for two unpermitted sheds located in the SFHA. Removal of structures OR permit applications must be submitted before the Residential Building Permit Certificate of Occupancy (CoO) will be released.

QUESTIONS FOR STAFF – VAR-23-12 - Ronchetti/Johnson

Clements: Do members of the BZA have questions for staff? Seeing none. I don't know if Dee has a question I can't see if she does.

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Owens: No, I do not. Later on, I will have a comment though.

Clements: Ok, with that being said if the petitioner is here and would like to speak to us you will have 15 minutes to tell us why you are requesting this variance. If you will kindly sign in and state your name and then I will swear you in.

PETITIONER/PETITIONER'S REPRESENTATIVE – VAR-23-12 - Ronchetti/Johnson

Ronchetti: Todd Ronchetti.

Clements: Mr. Ronchetti, would you kindly raise your right hand, and do you swear to tell the truth, the whole truth and nothing but the truth?

Ronchetti: I do.

Clements: Thank you.

Ronchetti: Pretty much we were just trying to make our house bigger. We assumed since the last 2 permits were approved that this one would get approved too but the floodplain has changed. Then we had to go into all of this. We have reached out about the benchmark, and they put us on their planning for that and we have asked them to start the Elevation Certificate for the standards met. I believe the builder has asked specifically for those standards instead of being referenced to reading the entire article and deciphering what they would like, and we are just waiting on response is what I was told. That is all that I got.

Clements: Wonderful. Ok. Thank you. Do members of the BZA have questions for Mr. Ronchetti? I have none. No. We will hear from the public and if anybody is in opposition to this you will have a chance to respond. Thanks for coming before us. Are there members of the public who would like to speak in favor of this petition? Please come and sign in, introduce yourself and then I will swear you in.

SUPPORTERS – VAR-23-12 - Ronchetti/Johnson

Glasscock: Mike Glasscock.

Clements: Ok, Mr. Glasscock, do you swear to tell the truth, the whole truth and nothing but the truth?

Glasscock: Yes.

Clements: Thank you.

Glasscock: I was the previous owner and filed with Sam, Samantha, my daughter on the first variance.

Loftman: Can you move the mic down a little bit?

DRAFT

Glasscock: Sorry. Is that better?

Loftman: Much better, thank you.

Glasscock: I was the original, the previous owner and my parents were the owners before that. The shed, I had no idea that you had to have a permit for a shed that you move around, you know a portable, so, I didn't know that. Sorry. I wouldn't have put them down there in a flood zone. I have lived in that whole area for 43 years so I wouldn't have put them where I thought it would flood. I still don't think it is where they want their house is a hazard for a flood. The last big flood that we had it got within like 30 feet and that was just the edge of the water and that took over 5 inches of rain in 2 hours, so we are talking a tremendous amount of rain that is going to have to happen to do any damage to where they want to put their house. As he said, I just want them close because I am not leaving, and I lived there to help take care of my parents and I want them to help take care of me. That is all that I have got to say.

Clements: Thank you so much Mr. Glasscock. Are there any other members of the public who would like to speak in favor of this petition? Is there any member of the public who would like to speak in opposition to this petition? If so, come to the podium, raise your virtual hand on zoom or press*9 on the telephone if you would like to speak in opposition. So, there is no one, coming back to the Board of Zoning Appeals, I see that Ms. Owens has her hand raised.

FURTHER SUPPORTERS - VAR-23-12 - Ronchetti/Johnson: None

REMONSTRATORS - VAR-23-12 - Ronchetti/Johnson: None

ADDITIONAL QUESTIONS FOR STAFF – VAR-23-12 - Ronchetti/Johnson

Owens: Yes, thank you. I want to say that I have driven past this spot a couple of times to check it out because I know the creek is right there and I mistakenly thought that it was a really floodable area. But looking at the pictures and what I saw when I drove by, I think allowing the new home to be put there is just fine, and I really don't like putting stuff in flood ways. But I think this looks good. That's my comment.

Clements: Thank you, Ms. Owens. Any other comments or questions by members of the BZA or a motion?

FURTHER QUESTIONS FOR STAFF – VAR-23-12 - Ronchetti/Johnson

Davidson: **I am going to make a motion that we accept VAR-23-12, Ronchetti/Johnson Buildable Area Variance to Ch. 804.**

Owens: I will **second**.

Jelen: Is that with or without the condition in the staff packet?

DRAFT

Davidson: I am sorry, **with the conditions**. I so apologize, yes. The one right there that we are looking at number one. Sorry about that.

Clements: Do you accept that Ms. Owens?

Owens: **You bet.**

Jelen: Alright, it has been moved and seconded to approve VAR-23-12, Ronchetti/Johnson Buildable Area Variance to Ch. 804, with the condition that the petitioner remove or submit permits, building and floodplain development for 2 unpermitted sheds located in the Special Flood Hazard Area. Removal of structures or permit applications must be submitted before the residential building permit Certificate of Occupancy will be released. A vote in favor is a vote to approve the variance with the one condition as stated in the staff packet. Guy Loftman?

Loftman: Yes.

Jelen: Dee Owens?

Owens: Yes.

Jelen: Pamela Davidson?

Davidson: Yes.

Jelen: Margaret Clements?

Clements: Yes.

Jelen: Motion carries 4 to 0.

The motion in case VAR-23-12, Ronchetti/Johnson Buildable Area Variance to Ch. 804, in favor approving the variance, with condition as stated in staff packet, carried unanimously (4-0).

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NEW BUSINESS

9. CDU-23-2

Equine Veterinary Services, Indoor Conditional Use to Ch. 813

One (1) 35.09 +/- acre parcel in Washington Township, Section 11 at 1301 E Chambers PIKE, parcel #53-02-11-400-003.000-017.

Owner: Renschler, Janelle & Jason

Zoned FR. Contact: shawnsmith@co.monroe.in.us

BOARD ACTION: Clements introduced the petition.

STAFF ACTION:

Smith: The request is for one Conditional Use to Chapter 813.

Owens: I cannot hear anything at all.

Clements: I think the mic went out. I think Tech Services, the mic went out again. Could you test it again? There is a green light flashing. If you will just bear with us when we take care of the technical difficulties of microphone. Sorry about that.

Smith: Testing.

Clements: Thank you, Mr. Smith.

Smith: Ok, so, as I was saying this is a request for a Conditional Use to Chapter 813, Veterinary Services Indoor and Condition 15 from Chapter 802. The purpose is to establish an indoor specifically an Equine Veterinary Clinic at 1301 East Chambers Pike. Chapter 802 of the Monroe County Zoning Ordinance defines Veterinary Service Indoor as an establishment of licensed practitioners primarily engaged in practicing veterinary medicine, dentistry or surgery where all services are performed or provided indoors. If approved the petitioner will need to apply for a commercial site plan, file for a subdivision to remove the single-family residence from the clinic itself and also apply for a Right of Way Activity Permit. These are the conditions set out in Chapter 813. They are also included in the packet. I will just leave them up here on the screen for just a moment. Just for clarification all conditional uses are subject to these requirements in Chapter 813.

Clements: Thank you for giving these to us, Mr. Smith. I really appreciate that. Is your presentation finished, then?

Smith: No, not yet.

Clements: Ok, sorry.

Smith: Use Specific Conditions, in Chapter 802 there is this one condition where the Plan Commission may attach additional conditions to its approval in order to prevent injurious or obnoxious dust, fumes, gases, noises, odors, refuse matter, smoke, vibrations, water-carried waste or other objectionable conditions and to protect and preserve the character of the

DRAFT

surrounding neighborhood. I just have some exhibits here. We have a location and a site conditions map. Here we have a current zoning map and a map identified as the Comprehensive Plan. Following this I will just have some photos. I will go through those. This would be the entrance to the property itself. This would be inside one of their larger barn areas. Also, there are horses currently present on the property. Here are some more photos of the property. Here we have the laboratory space and also the location of the single-family residence that is on the property. This is a letter of support submitted by some neighbors, David and Dena Shoemaker. They wanted to voice their support for the conditional use of veterinary services so long as it is limited to equine, so not cats, not dogs, not the standard vet clinic. Staff recommends approval of the conditional use petition for Veterinary Services Indoor of Chapter 802 and 813 based on the ability to meet the conditions of the Conditional Use in Chapter 813 with the following conditions as stated previously.

- 1) Petitioner applies for a Commercial Site Plan.
- 2) Petitioner files a subdivision to remove the single-family home from the Veterinary Service, Indoor use.
- 3) Petitioner applies for a Right-of-Way Activity Permit.

RECOMMENDED MOTION

Staff recommends approval of the conditional use petition for Equine Veterinary Services, Indoor of based on ability to meet the conditions of the Conditional Use in Chapter 802 with two conditions:

1. Petitioner applies for a Commercial Site Plan.
2. Petitioner files a subdivision to remove the single-family home from the Veterinary Service, Indoor use.
3. Petitioner applies for a Right-of-Way Activity Permit.

QUESTIONS FOR STAFF – CDU-23-2 – Equine Veterinary Services

Clements: Could I ask a question? Why is it necessary that they remove the single-family home from the plot that contains the veterinary service? Is it because it will go to commercial all together?

Smith: Yes.

Clements: Ok. With that being said do other members of the Board have questions for staff?

Loftman: I do not.

Davidson: But I am sure glad you asked that one.

Clements: I see a bubble in the chat. Is there anything we need to be aware of? Ok, thank you. If the petitioner, Ms. Renschler, if you are here and you would like to come to the podium and sign in. Oh, she is on zoom. We see your hand raised and you will be unmuted. If you would state your name and raise your right hand. Do you swear to tell the truth, the whole truth and nothing but the truth?

DRAFT

**PETITIONER/PETITIONER'S REPRESENTATIVE –
CDU-23-2 – Equine Veterinary Services**

Renschler: I do.

Clements: Thank you and could you pronoun your name so I don't mess it up from now on?

Renschler: I am Doctor Janelle Renschler.

Clements: Thank you, Doctor Renschler. Please talk with us about your request.

Renschler: Yes, I am a veterinarian working solely on horses and my business is Horizon Equine Integrated Medicines. It is a specialty practice that focuses on acupuncture, osteopathy and equine dentistry. With that being said I don't do general practice, equine work or see other species so my volume is relatively low given it is a specialty practice. I already have these facilities on my property and my wish is that I could allow occasional call-in treatment and that I really all that I am going for here. I do have an issue with removing my single-family home from the property because this is going to involve a great expense in the survey and the permitting activity. So, I don't know that I am going to be able to proceed with this plan given that restriction, but I would still seek approval for this if you can't remove that condition. I would be happy to answer any other questions that you have about the project.

Clements: Do members of the Board of Zoning Appeals have questions for Ms. Renschler? I have a question for staff. Could this qualify under Home Based Business, this veterinary services?

Jelen: The Conditional Use that you are looking for, that is being applied for specifically not under a residential use so it has been identified as a more intense use than a Home Occupation or a Home Based Business mainly because of the in and out traffic that would be provided by this use as opposed to a Home Based Business or a Home Occupation use, which typically does not have a lot of traffic.

Clements: Is there a situation under which the home does not need to be separated from the veterinary services?

Jelen: I don't believe that we can do a commercial site plan with a home on the lot. It brings into question the principal use on the lot. A residence is a principal use and then also this Veterinary Services Indoor would be a principal use. So, this use I believe is conditional in the rural zones, but it is also permitted in some of the commercial zones. It is allowable in the rural zones but by conditional use only.

Clements: Conditional Use and because it is an Equine Veterinary Services there is no option but to make it commercial?

Jelen: If you are qualifying it under this use Veterinary Services Indoor it would be under a

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category of nonresidential or commercial. So, you would have a principal commercial use and a principal residential use on one lot which we don't find that there is a good way of dealing with that in the zoning ordinance to separate them.

Clements: I would like to just take one moment and thank you Director Ms. Nester Jelen for going over that with us. I would like to take one moment because this is an area that of course I am not an expert at all but I am aware that Bloomington and Monroe County have a virtue kind of horse/equine business and activity and it is part of kind of the thriving economy that not everybody participates in but it still adds value to our community in that it is in keeping with our rural character and our rural zones. I think that whatever can be done to support these kinds of agricultural services is how I would consider it. If you are helping with veterinary services of large animals that that has some agricultural value and maybe less commercial. I don't know but I am thinking about it in those terms. With that being said I would like to turn to my colleagues on the Board of Zoning Appeals and hear any input you have or any ideas. First, we will hear from us and then from the public. Yes, Ms. Owens?

Owens: Thank you. I think that the letter that the petitioner submitted was compelling in that because of the highly unique services that are being provided there is not traffic coming and going all the time, a lot of traffic. Not like Doctor Shake's clinic for small animals for example and that they are by virtue, you can see in the pictures, but by virtue of what they also said they are all well removed from neighbors and such. So, I don't think that any activity that would be performed there would be a bit disruptive. We will see if anybody comes forward to remonstrate. But I was convinced by looking at the facility, which is wonderful, a great facility, and then the letter and I was convinced that this is not a bad use for this property in spite of our ordinance and law not quite being able to fit it into a niche. That is all that I have.

Clements: Ok, well, let's move to the public. Are there members of the public who are here that would like to speak in favor? Oh, thank you. You have already been sworn in Mrs. Cassady.

SUPPORTERS – CDU-23-2 – Equine Veterinary Services

Wilke-Cassady: Thank you. Tamby Wilke-Cassady. After listening to what the petition has going on here and having grown up in kind of a farming area, I don't perceive this as much differently than really working with large animals on any other kind of farm, which is a business and has a house on it. That is all that I have to say.

Clements: Thank you. Are there other members, oh, I see Mr. Burnworth has his hand raised on zoom if you could kindly unmute him.

Burnworth: Hello, can you hear me?

Clements: Yes, and you are still sworn in so if you would kindly share with us your thoughts.

Burnworth: I like the way that you are thinking about this because I pass this site 3 days a week and I wouldn't even know that that house and barn was back there if I didn't intentionally look at it. I agree as a former horseman myself that this is such a specialty that it won't frequent trips

DRAFT

back that driveway. I hope that consideration is given and there is some way to find an agreement on some way to zone this to allow them to keep that house there. Because I don't see it as a big deal myself, but I know the county ordinances do. I would like to see something done to allow them to do what they want to do and keep the house there.

Clements: Thank you very much Mr. Burnworth. Are there other members of the public who would like to speak in favor of this or in opposition? Are there members of the public who are here in person who would like, or online or on the telephone who would like to speak in opposition to this? Please come to the podium, raise your hand on zoom or press *9. I think, I see none, so I come back to staff. Are there other options on this particular property? It is zoned Forest Reserve can we approve this without separating the house, this Conditional Use?

FURTHER SUPPORTERS - CDU-23-2 – Equine Veterinary Services: None

REMONSTRATORS - CDU-23-2 – Equine Veterinary Services: None

ADDITIONAL QUESTIONS FOR STAFF – CDU-23-2 – Equine Veterinary Services

Jelen: I think the other option would be for us to reevaluate whether this could qualify under a Home-Based Business with our legal department. It is very clearly fitting under the Veterinary Services Indoor. If this Conditional Use is approved, it does give them flexibility to expand the veterinary services over time where the Home-Based Business may not have the same flexibility. But I don't see under the Veterinary Services Indoor how the staff could look at the commercial site plan with the house on it, without doing some sort of subdivision of the house and the business. So, the options would be that we could continue this case and we will work with the petitioner to see if they could be a Home-Based Business option, which would not require a Conditional Use or separating the house. But it is our opinion that it better fits in Veterinary Services Indoor so I am not 100% sure this wouldn't just come back next month with more discussion with the petitioner.

Clements: Also, if you would kindly investigate agricultural uses not just commercial veterinary services indoor but uses with the fact that animal husbandry is part of agricultural not strictly veterinary, I think. But I have to go back to Ms. Renschler for just one moment and ask Doctor Renschler if a continuance of this proposal until next month would be amenable to you so that we could explore other nuances in the law?

Renschler: Am I unmuted? Can you hear me?

Clements: Yes, you are.

Renschler: Ok, great. Yes, because another concern that I have when I looked at the requirements for a commercial site plan are a 30 foot driveway and we have about a quarter mile long 12 foot driveway and there are a number of utilities running alongside the driveway in an easement so I don't see any way feasible that I would be able to meet that driveway requirement to be a commercial site. Unless I received a variance for that the project may be dead all together. I guess maybe a continuance where we could explore other options would be better.

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Clements: Ok, thank you Doctor Renschler. Mr. Loftman you had your hand raised, I'm sorry.

Loftman: You asked exactly what I was going to.

Clements: We are working in harmony then. With that in mind, is there a motion to continue this?

FURTHER QUESTIONS FOR STAFF – CDU-23-2 – Equine Veterinary Services

Davidson: **I will make a motion to continue the request for CDU-23-2 so that staff and petitioner can explore other options.**

Loftman: I would **second** the motion and add that it seems like we ought to bend over backwards to make this work because it is a nontraditional use of property and I think calling it agricultural which in a way may open doors. But whatever. I trust the staff to work with Doctor Renschler and hope we can make a way to do it that won't effectively make it impossible to do what she wants to do.

Clements: The motion is to continue.

Jelen: It has been moved and seconded to continue this case to the May 3, 2023, Board of Zoning Appeals meeting. A vote in favor is a vote to continue this to the May 3rd meeting. Dee Owens?

Owens: Yes.

Jelen: Pamela Davidson?

Davidson: Yes.

Jelen: Margaret Clements?

Clements: Yes.

Jelen: Guy Loftman?

Loftman: Yes.

Jelen: Ok, it has been continued by a vote of 4 to 0.

The motion in case CDU-23-2, Equine Veterinary Services, Indoor Conditional Use to Ch. 813, in favor of continuing the case to the May 3, 2023, meeting of the BZA, carried unanimously (4-0).

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NEW BUSINESS

10. VAR-23-13

Brown ECO Area 3 (18% Slope) Variance to Ch. 825

One (1) 24.02 +/- acre parcel in Benton South Township, Section 31 at 6109 E Kerr Creek RD, parcel #53-06-31-100-013.000-003.

Owner: Bogdanoff, Wendy & Peter

Zoned AG/RR & ECO 3. Contact: acrecelius@co.monroe.in.us

BOARD ACTION: Clements introduced the petition.

STAFF ACTION: Petition was withdrawn by the petitioner.

NEW BUSINESS

11. VAR-23-14a

Ertel & Forsyth Variance to Condition #53 from Chapter 802

12. VAR-23-14b

Ertel & Forsyth Side Yard Setback Variance from Chapter 833

One (1) 2.29 +/- acre parcel in Bloomington Township, Section 36 at 4615 E State Road 45, parcel # 53-05-36-200-007.000-004.

Owner: Ertel, Nicholas & Forsyth, Haley

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

BOARD ACTION: Clements introduced the petition.

STAFF ACTION:

Smith: Thank you Margaret. The request is 2 design standards variances Condition #53 and #55 from Chapter 802 and Side Yard Setback from Chapter 833. The purpose is to establish a Detached Accessory Dwelling Unit and the property and just as a reminder for the Board and for the public the petitioners have previously applied for a Use Variance at the prior BZA meeting of March 21, 2023, which was approved and allows for the use of an Accessory Dwelling Unit on this property.

Clements: Thanks for reminding us.

Smith: Accessory Dwelling Units require at least 6 acres. Chapter 833 requires that the RE2.5 zone have a side yard setback of 30 feet. This structure has approximately half a foot. Chapter 802 of the Monroe County Zoning Ordinance defines Accessory Dwelling Unit as a separate, complete housekeeping unit with a separate entrance, kitchen, sleeping area and full bathroom facilities which is an attached or detached extension to an existing single-family structure. If approved the petitioner will be required to submit a residential building permit application and comply with other building and zoning codes. This would include applying for and completing the installation of a new septic system as identified by the Health Department. These are the standards for a DADU, which are also identified under the petitioners Use Variance from the March 1st BZA meeting. They should also be included in the packet. These are the requirements for design standard variances. It is a bit lengthy, and I am happy to come back to it if the Board would like. I will just leave this on the screen for just a moment. These are just some aerial images of the property. These are going to be the same images also seen at the prior BZA meeting. This is the petitioner's letter to the BZA that was also submitted at the prior meeting. This is the survey that was conducted by Bynum Fanyo dated January 10, 2023. This is the petitioner's floor plan that was requested by staff. I believe the petitioner would also be willing to elaborate on these plans when given the opportunity. Here is the septic permit that was received and dated by the Health Department which called for an installation of a new septic system. Again, these were letters of support by fellow neighbors. Staff recommendation is to deny the design standards variance to Condition #53 & #55 under the reasoning that practical difficulties are not met. There is no substantial evidence the structure cannot be utilized under one of the permitted uses listed in the RE2.5 zoning district, and therefore does not meet criteria C. Also, staff recommends denial of the Side Yard Setback Variance as practical difficulties have not been met. The setback issue can be more effectively addressed through a relocation of the existing development or building or structure.

CASE NUMBER	DETAIL	RECOMMENDED MOTION
VAR-23-14a	Condition #53 & #55 from Chapter 802	Denial
VAR-23-14b	Side Yard Setback Variance from Chapter 833	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 design standards variance to Condition #53 & #55: Practical difficulties are not met. There is no substantial evidence the structure cannot be utilized under one of the permitted uses listed in the RE2.5 zoning district, and therefore does not meet criteria C.

Deny the side yard setback variance: Practical difficulties are not met. The setback issue can be more effectively address through a relocation of the existing development/building/structure.

QUESTIONS FOR STAFF – VAR-23-14a & VAR-23-14b – Ertel & Forsyth

Clements: Ok, thank you. Do members of the Board of Zoning Appeals have questions for staff? I can't see if Ms. Owens has any questions.

Owens: I kind of do. I guess, even though I went through all of this I am still confused. We said yes, it is ok to have a DADU and then we turn around and say it is not ok to do anything with it. What am I missing?

Smith: Dee, the previous Use Variance, which was also approved by the BZA, approved the use of the DADU and this in particular is in relation to design standards to have a DADU.

Clements: You mean like the location of it?

Smith: Yes, locations, setbacks, that sort of thing.

Clements: If you look at page, is it 170 of your packet, it shows the relationship of the proposed DADU to the property line. With that being said we will hear from the petitioner now if that is ok. Ms. Forsyth, we see in person instead of you calling in. It is good to see you.

**PETITIONER/PETITIONER'S REPRESENTATIVE –
VAR-23-14a & VAR-23-14b – Ertel & Forsyth**

Forsyth: It is spring break for the teachers so I could come.

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

DRAFT

Forsyth: Yes I do.

Clements: Could I just ask you before you begin what do you teach?

Forsyth: Human geography so we study GIS quite a bit. I have gotten to use it more in this situation than I even thought I would. I have the proposed floor plan too and I made enough copies.

Loftman: Thank you.

Davidson: Thank you.

Clements: Thank you so much.

Forsyth: Quite a bit has happened in the last month since we met. We got to talk to Gary Gettlefinger, who was one of the neighbors who wrote in. He is the one that you can see if you go back to the images, Shawn. He is the cream-colored house that is the only one that can see the structure. He came over and we, right there and we walked him through. Previously he wasn't able to see the structure so much because there was, we talked about this last week, it will be a little redundant, dozens of ponds on the property that were overgrown and we were able to remove them, which he was very thankful for because of the mosquito problem that was in the area. We discussed some of the plans and was really excited that this had passed. One of the things, we are moving from Chicago to this area, we are new to small town life, and it has been really wonderful. The house is more than we bargained for and always, but the neighbors are amazing. He has helped us to get people to clear the land. He had a group chat with everyone on the street to support us. Bob Cummings came last time for us. We talked with us about our plans for the home and how we designed it in a way if you notice on the floor plan to be as least impactful from his of the structure. We just have 2 windows, and one will be frosted and then one will be over the kitchen sink, which is blocked by some landscaping in his yard. So, there are not any direct lines towards his house from my moms windows of her cottage and we have discussed fencing options and helping even purchase shrubs for his lot to help him have a barrier from us. He is just that this structure that has been there since he built his home 16 years ago, we know it has been there for over 20 years he told is when he was over 2 weekends ago to the property. He said when he built his home this structure was already standing unfinished. I know the idea of us being about to finish it for another purpose other than DADU is an option but financially it isn't for us. We bought the property not knowing that it had a septic system because that was not disclosed to us when we purchase it and it wasn't in our inspection because everything is so overgrown or was with poison ivy. We have ongoing cases of it and we realized that the cost of this house, it will be a beautiful forever home but it was much more than we anticipated. Without my mom being able to have this structure and help bring in funds to build a home for her that is affordable, and we talked about this last time. We are blessed to have her this close. We have been living cross the country for 10 years. So, we really want this to happen. But the structure has been there dilapidated for 20 years. The neighbors are all in support. They do want us, and we are fine with anything that needs signed that it won't become an Airbnb. It will be our family. My mother will live there. Someday maybe when we retire, we would move there, and our daughter would move to the house. We are trying to be a part of this community. They are very happy that we are not developers tearing it down and building and apartment

DRAFT

complex. This has been stressful, but it was also that sign in the front yard has brought a lot of people to meet us and be a part of this neighborhood and we are relay thankful for their support. You can't see from the photographs but no one from the front can see. The only person impacted is Gary who is in full support. We are just hoping to be able to make this happen and make our investment already in the floorplans and the property. Because otherwise it will have to stay like that for quite a few more years. The house itself is not livable, the main home. That would be the way down the line project if it wasn't for my mom. That's it.

Clements: Thank you. Do you have questions for Ms. Forsyth? No. I don't know if Dee does, but I do have one question for staff. Basically, this is the floorplan that will sit on the existing slab or foundation for the building that currently exists right on the property line. Right?

Smith: Yes.

Clements: The thing that we have to be concerned about as far as the Board of Zoning Appeals is we know your intention is to stay here forever and everything, but we have to worry about what would happen should you decide to move or if Doctor Cummins would move as well. Because it would be taking over the site and the foundation of an existing structure, I have less concern about that. But I wonder how my colleagues feel about that.

Davidson: I have less concern about that too. I the requirement for this kind of ancillary structure is 5 acres but every time we have had it has never been 5 acres and I look at a property like this with that abandoned horrible looking, it must just be an eyesore.

Forsyth: We fell in love with the land in August when it was green and then the amount of garbage, I mean, we have hauled thousands of dollars' worth. He was very old. He had dementia. There was a lot of conditions that went into this, and we are happy to have to. It is getting taken care of now but yes, it is. The flapping of that, Gary jokes that he has this beautiful many thousands of dollars pool that he hears tarps flapping in the wind while he is relaxing in it. It is ugly.

Davidson: It is very disturbing that has been sitting there in that decrepit state for 20 years and is a nightmare and has no use other than to possibly to tear it down. But you want to rehab it exactly the way we all want to do with our parents having them close by.

Forsyth: Right now, we need help with childcare and as she ages, I am her only child now. It just makes life a lot better, and housing is expensive here.

Davidson: Yes, it is.

Clements: Thank you. I don't know if your husband wanted to speak. Ok, if there are members of the public who would like to speak in favor of this petition please come to the podium, make yourself known on zoom or press *9. If there are members of the public who would like to speak in opposition to this petition, please make yourself known. On zoom you can raise your hand or if you are calling in press *9. If there is no one I would like to move back to the Board of Zoning Appeals for further discussion and/or a motion.

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SUPPORTERS – VAR-23-14a & VAR-23-14b – Ertel & Forsyth: None

FURTHER SUPPORTERS - VAR-23-14a & VAR-23-14b – Ertel & Forsyth: None

REMONSTRATORS - VAR-23-14a & VAR-23-14b – Ertel & Forsyth: None

**ADDITIONAL QUESTIONS FOR STAFF –
VAR-23-14a & VAR-23-14b – Ertel & Forsyth**

Loftman: I am struck by, I just want to acknowledge my feeling that the staff is not having a very good batting average tonight. But that doesn't mean any lack of respect or appreciation of the work they do. They are the gate keepers, and we are the one that get to open it or close it.

Clements: That's right. The floodgates, literally

Loftman: But you need to tell us what the problems are, and you have done it but everything that has led us to conclude that we should do this DADU to solve a miserable problem compels me to **move to approve this petition.**

Smith: We do actually have someone on zoom, I believe.

Clements: Yes, let's hear from the person on zoom or on the telephone number listed. If you could press *6 to unmute yourself. You would have to press *6. Thank you. Please state your name.

Alexander: Ray Alexander.

Clements: Mr. Alexander would you kindly raise your right hand, and do you swear to tell the truth, the whole truth and nothing but the truth?

Alexander: I do, so hep me God.

Clements: Thank you and you have 3 minutes.

Alexander: I just wanted to voice my support for the requirement or for the proposal to build out that structure as a DADU. I own the property across the street, 4610 East State Road that was also owned by the previous owner and I can share and commensurate with Ms. Forsyth on the struggle that she faced when she bought the property. I faced similar issues and are still struggling with them. By the way, Ms. Forsyth, I just want you to know that I am going to improve that property across from you as well. But it is great to see. The previous owner had the walkthrough. He was as friendly guy, very cordial and I had the opportunity to walk not into the house that you guys are struggling with but I did see that structure in the back so I know exactly what you guys are talking about and absolutely could envision that thing during the winter months as being a terrible eyesore. So, it is wonderful that the Board is willing to consider a variance from the existing code to allow them to build that out into a DADU and I completely

DRAFT

understand their goal. I agree with them. The property is a beautiful piece of property. The trees are beautiful. It would be great to get that scaled back, some of that growth scaled back and convert that to a good purposeful use. So, yes, 100% support the request for a variance to build that out into a livable home.

Clements: Thank you, Mr. Alexander. I would just like to say one more thing. I believe these 2 homes were owned by Mr. Michael Duff and he was a world class bow maker. He made bows for stringed instruments, and he had a unique methodology and he supplied bows to some of the great musicians around the world including Starker, my late husband and my late husband also bought a quartet of bows for a string quartet that is using them in Mexico. You are living on heralded property, and I know it got a little bit out of his hands, but he is a really good man and an artisan. He was a collector of lotus flowers, and he supplied a lot of the ponds around Bloomington and Monroe County with specialty lotus flowers that he had collected from around the world. So, just to add that there. There has been a motion and a second, so let's ...

Loftman: Did I hear a voice?

Clements: Mr. Alexander, would you like to say anything else?

Alexander: Absolutely. I didn't mean to disparage Mr. Duff by eluding to the quality of the properties and the conditions of the properties. I understand that he faced some significant challenges, mental challenges toward the later stages of his life. He was, like I said, a very, very pleasant man and nice enough to walk me through his property and we had a great cordial relationship and I agree, I have seen his hybrid ponds and in developing those flowers. I really strongly appreciate that fact that what we have bought, both Ms. Forsyth and I, I can speak from my perspective, and I believe she has pretty clearly articulated the desire to keep those properties and improve those properties kind of as original. I appreciate your time. Thanks.

Clements: Thank you Mr. Alexander. We can move now to the vote since there has been a motion and a second.

FURTHER QUESTIONS FOR STAFF – VAR-23-14a & VAR-23-14b – Ertel & Forsyth

Jelen: I did hear the motion by Guy. Was there a second?

Davidson: I will **second** that.

Jelen: Ok. It has been moved and seconded to approve both VAR-23-14a and VAR-23-14b and those are for Conditions #53 from Chapter 802 for the 5-acre requirement as well as the Side Yard Setback requirement in Chapter 833. A vote in favor is a vote to approve both variances without any conditions. Pamela Davidson?

Davidson: before we vote I have a quick question. Do we want to put any conditions on this because there has been concern if the family vacates the property and we always worry that the variance runs with the property and not with the owner. Should be consider any conditions? Are we worried about that at all?

DRAFT

Jelen: From a staff perspective, you are saying?

Clements: I don't think we are.

Jelen: You are approving a variance for a side setback for the structure as it exists. If there was an amendment to its footprint it would be right back here at the BZA.

Davidson: Perfect.

Jelen: So, this is a remodel allowance, essentially to change the use. Does that make you feel?

Davidson: The question had been answered. We don't need conditions.

Jelen: Pamela Davidson?

Davidson: Yes.

Jelen: Margaret Clements?

Clements: Yes.

Jelen: Guy Loftman?

Loftman: Yes.

Jelen: Dee Owens?

Owens: Yes.

Jelen: Ok, the motion is approved by a 4 to 0 vote.

The motion in cases VAR-23-14a, Ertel & Forsyth Variance to Condition #53 from Chapter 802 and VAR-23-14b, Ertel & Forsyth Side Yard Setback Variance from Chapter 833, in favor of approving the variances, carried unanimously (4-0).

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REPORTS:

Clements: Are you moving to adjourn, Dee?

Owens: I did.

Clements: There are no objections.

Jelen: Thank you.

Planning/ Jelen: No reports.

Legal/Schilling: No reports.

The meeting adjourned at 8:42 pm.

Sign:

Attest:

Margaret Clements, Chairman

Jackie N. Jelen, Secretary

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