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**BOARD OF ZONING APPEALS
Hybrid Meeting - Minutes
June 28, 2023 - 5:30 p.m.**

CALL TO ORDER

ROLL CALL

INTRODUCTION OF EVIDENCE

APPROVAL OF AGENDA

APPROVAL OF MINUTES: April 5, 2023

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

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

ABSENT: Dee Owens

STAFF PRESENT: Tammy Behrman, Assistant Director, Anne Crecelius, Planner II, Shawn Smith, Planner II, Daniel Brown, Planner II

OTHERS PRESENT: David Schilling, Legal, Tech Services

INTRODUCTION OF EVIDENCE:

Tammy Behrman 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 MINUTES:

Minutes could not be approved due to lack of quorum for vote.

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ADMINISTRATIVE BUSINESS: NONE.

OLD BUSINESS: NONE.

NEW BUSINESS:

- 1. 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
*****WITHDRAWN BY PETITIONER*****

- 2. VAR-23-15a** **Fields-Lucas Minimum Lot Size Variance to Chapter 804**
- 3. VAR-23-15 b** **Fields-Lucas Minimum Lot Width Variance to Chapter 804**
- 4. VAR-23-15c** **Fields-Lucas Side Yard Setback Variance to Chapter 804**
One (1) 0.47 +/- acre parcel in Perry Township, Section 27 at 5865 S Fairfax RD, parcel #53-08-27-300-002.001-008.
Owner: Fields, Anne & Lucas, Jeffrey
Zoned AG/RR. Contact: acrecelius@co.monroe.in.us

- 5. VAR-23-16** **Zaricki Minimum Lot Size Variance to Chapter 804**
One (1) 1.03 +/- parcel in Indian Creek Township, Section 23 at 8865 S Rockport RD, parcel #53-10-23-300-007.000-007
Owner: Bloomington Comm Radio Inc.
Zoned AG/RR. Contact: drbrown@co.monroe.in.us

- 6. VAR-23-5** **Sojourn House Inc AMENDED Use Variance to Group Home Class II in Chapter 802**
One (1) 7.73 +/- acre parcel in Benton South Township, Section 33 at 7505 E Kerr Creek Road, parcel #53-06-33-200-003.000-003.
Owner: Sojourn House, Inc.
Zoned AG/RR, ECO3. Contact: tbehrman@co.monroe.in.us

- 7. VAR-23-25a** **Hupp Minimum Lot Size Variance to Chapter 804**
- 8. VAR-23-25b** **Hupp Minimum Lot Width Variance to Chapter 804**
One (1) 1.27 +/- acre parcel in Bean Blossom Township, Section 32 at 8448 W Chafin Chapel RD, parcel #53-03-32-100-023.000-001.
Owner: Hupp, Michael J & Anna C.
Zoned AG/RR. Contact: drbrown@co.monroe.in.us

- 9. VAR-23-26** **Halter Rear Yard Setback Variance to Chapter 804**
One (1) 0.58 +/- acre parcel in Richland Township Section 2 at 6565 N Maple CT, parcel #53-04-02-202-002.000-011.
Owner: Halter, Lisa
Zoned AG/RR. Contact: shawnsmith@co.monroe.in.us

- 10. VAR-23-27 Smelser Rear Yard Setback Variance to Chapter 804**
One (1) 0.05 +/- acre parcel (condominium) in Perry Township,
Section 40, at 614 W Soutar DR, parcel #53-01-40-379-000.000-008.
Owner: Smelser, Sheila & William.
Zoned RM7. Contact: acrecelius@co.monroe.in.us
- 11. VAR-23-28 Norris Front Yard Setback Variance to Chapter 804**
One (1) 0.24 +/- acre parcel in Perry Township, Section 17,
at 562 W Green RD, parcel #53-08-17-102-007.000-008.
Owner: Norris, Richene
Zoned RS3.5. Contact: acrecelius@co.monroe.in.us
- 12. VAR-23-29 Huston Front Yard Setback Variance from Chapter 804**
Two (2) 1.19 +/- parcels in Bloomington Township, Section 18,
at 5991 E State Road 45, parcel #53-05-13-400-003.000-004.
Owner: Huston, Joel
Zoned SR, CR, & ECO3. Contact: acrecelius@co.monroe.in.us

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Clements: With regard to tonight's agenda, I would like to re-announce that the first item under New Business, VAR-23-4, the Bloomington Self Storage Buildable Area on Curry Pike has been **withdrawn. I would also like to make a motion that the Sojourn House petition for VAR-23-5 be removed from the agenda because we have heard the case within the last 12 months** and I would like to affirm our rules and procedures that an appeal or petition which has been decided against the petitioner shall not again be placed on the docket for consideration by the Board within a period of 12 months from the date of decision previously rendered, except upon the motion of a member and adopted by unanimous vote of all members present at a regular or special meeting thereof. So, I make that motion with regard to tonight's agenda.

Loftman: I **second**.

Behrman: Staff would like to add this is an amended petition and under the Monroe County Zoning Ordinance 812-3(K), which is on page 66 the staff packet and there was a typo, which is in my slide presentation, I was going to correct that, but under 812-3(K) it states if the Board of Zoning Appeals denies the application for variance approval, the applicant may file an amended application. If the amended application is filed within 6 months of the Board's denial of the original application, the applicant shall not be charged for an application fee.

Clements: Having been filed, the Board of Zoning Appeals has determined not to hear it for the 12 month period. We have made that motion and it has been seconded. Please call the roll.

Behrman: Alright, I will call the roll.

Davidson: May I ask a question first? Does the amended nature change that? You just read the other regulation. Is it amended substantially enough to? Those 2 regulations can be counter to one another. So, which waives?

Behrman: They have submitted a letter from their legal representation. It is a 10-page letter that has been submitted and they also have submitted a draft written commitment that they would record should this pass through the Board of Zoning Appeals and that is a significant enough of an amended petition to staff. There were also a few other things that were included as well as some other remonstrance and support letters associated with this petition.

Clements: We disagree. A motion has been made. It has been seconded. Please call the roll.

Behrman: I have a hand up from Skip Daley showing.

Clements: Mr. Daley has his hand raised.

Daley: I will lower my hand if there is a vote.

Clements: Please call the roll.

Behrman: Margaret Clements?

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Clements: Yes, I move to remove it from the agenda.

Behrman: Skip Daley?

Daley: Yes.

Behrman: Guy Loftman?

Loftman: Yes.

Behrman: Dee Owens is absent. Pamela Davidson?

Davidson: No.

Clements: Item Number 6, VAR-23-5, Sojourn House Incorporated as Amended Use Variance to Group Home Class II in Chapter 802, concerning one parcel of 7.73 plus or minus acres, at 7505 East Kerr Creek Road has been removed from tonight's agenda. Thank you.

The motion in case VAR-23-5, Sojourn House Inc AMENDED Use Variance to Group Home Class II in Chapter 802, in favor removing the item from tonight's agenda and not hearing this petition for the 12 month period, carried (3-1).

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NEW BUSINESS

1. 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: Petition was withdrawn.

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NEW BUSINESS

- 2. VAR-23-15a **Fields-Lucas Minimum Lot Width Variance to Chapter 804**
 - 3. VAR-23-15 b **Fields-Lucas Minimum Lot Size Variance to Chapter 804**
 - 4. VAR-23-15c **Fields-Lucas Side Yard Setback Variance to Chapter 804**
- One (1) 0.47 +/- acre parcel in Perry Township, Section 27 at 5865 S Fairfax RD, parcel #53-08-27-300-002.001-008.
Owner: Fields, Anne & Lucas, Jeffrey
Zoned AG/RR. Contact: acrecelius@co.monroe.in.us

BOARD ACTION: Clements introduced the petition.

STAFF ACTION:

Creceilius: The property is located in Perry Township, Section 28, off of South Fairfax Road. The property is zoned Agricultural/Rural Reserve. Just a very quick summary. There are 3 variance requests. The first is for Minimum Lot Width because it zoned Agricultural/Rural Reserve and the minimum required is 200 feet. The property is a legal lot of record. It did contain a single family residence that was removed some time between 2016 and 2019. This very small lot is 36.6 feet wide. When it comes to Minimum Lot Size, the requirement for Agricultural/Rural Reserve is 2.5 acres. This lot of record is 0.264 acres. The Side Yard Setback required for the Agricultural/Rural Reserve zoning district is 15 feet for residential uses and 50 feet for other types of uses. The petitioners are requesting a 5.8 foot side yard setback. On your screen is a couple of pictometry images. The first on the bottom is 2014. This was the single family residence that existed on the property for some years. It was in a dilapidated state and somewhere between 2016 and 2019 it was removed. So, the top photo on your screen is aerial imagery from 2020 where we can see the majority of the residence was removed with part of a shed remaining and a lot of debris on the site. This is what the site currently looks like. Again, 36 feet wide so we are just looking directly at this narrow area back to the wood line. So, to reference this map again. One of the requirements is for minimum lot size. Something that staff likes to do in considering these requests is look at other parcels in the area that might be under 2.5. There are a few generally in this area. A note is that the parcels may represent tax parcels and not necessarily legal lots of record. We do know that there are multiple, what appear to be legal lots of record developed with single family residences right in this area on Fairfax. The petitioner is present here today but their representative, Mr. Doug Graham with Bynum Fanyo had included a letter. Staff has worked with the petitioner a bit about this request and something that we had requested was that the petitioner supply a limited area of development that if the side Yard Setback variance is approved that the reduced side yard setback would only apply to. Because the property is vacant we really don't know and they are not necessary too close to having a footprint of the house confirmed we really didn't know exactly where the house would be so staff wasn't comfortable with a full, long part of the lot having only a 5.8 foot setback with no idea what the development is going to look like, so we requested that they maybe propose an area for development that the reduced setback would apply to and they were more than happy to comply with that. The property it is so narrow, the minimum lot size and the minimum lot width, they are the absolute minimum required to develop the property for any structure and due to the width of the constrained size any structure proposed would most likely require a reduced setback. But without a specific footprint staff was comfortable with having kind of a bounding box of where this reduced setback would apply. That is the dashed line that you see in the middle

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of the site plan here. Just another photo of the petition site and then standing far to the east looking towards South Fairfax Road looking west. The staff recommendation for the Minimum Lot Width, VAR-23-15a and VAR-23-15b, Minimum Lot Size is approval. The staff recommendation for VAR-23-15c for Side Yard Setback to have a 5.8 foot setback for the side yard is a recommendation of approval with the condition that the reduced setback only applies to the area delineated on the site plan as published. Any change to that would require a separate variance. Does anybody have any questions?

CASE NUMBER	DETAIL	RECOMMENDED MOTION
VAR-23-15a	Minimum Lot Width from Ch. 804	Approval
Var-23-15b	Minimum Lot Size from Ch. 804	Approval
VAR-23-15c	Side Yard Setback from Ch. 804	Approve with Conditions

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

Recommended Motion Conditions or Reasoning:

Condition 1: VAR-23-15c reduced setback only applies to the area delineated on the site plan as published.

QUESTIONS FOR STAFF – VAR-23-15a, VAR-23-15b, VAR-23-15c – Fields-Lucas

Clements: Ms. Crecelius, I see that there are 3 bubbles on the chat, and I just want to make sure that Dee or Skip doesn't have a question.

Behrman: Those are related to Skip and some technical issues that he is having.

Clements: Ok, well, I have a question about, this is on septic right?

Crecelius: The property was originally on septic. They are still working with the Health Department about getting a new septic. Whether there is a septic approved or not, the property is still a legal lot of record and because of the size any development whether it is a residential storage barn would require basically a combination of these 3 variances. The last I heard about their work with the Health Department is that they were basically confirming that this is a legal lot, which staff sent some information along to help them with that decision. I haven't checked in with them or heard if they have gotten any further with that but any development whether they wanted to put a barn would require a combination of these 3 variances.

Clements: I would just like to remind my colleagues here and be reminded usually where a septic field is, or a septic system is required the minimum lot size is one 1. Correct? Is that correct normally?

Crecelius: For the Health Department, yes.

Clements: Ok and this is 0.47 acres, just for point of reference. With that being said, do my

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colleagues have questions for staff?

Loftman: Not I.

Clements: Is anybody, is Skip or Dee online and do they have questions for staff?

Crecelius: Seeing none.

Clements: Ok, if the petitioner or the petitioner's representative is here you can come to the microphone, sign in and then I will swear you in. Hi.

**PETITIONER/PETITIONER'S REPRESENTATIVE –
VAR-23-15a, VAR-23-15b, VAR-23-15c – Fields-Lucas**

Lucas: Hello, I am Jeff Lucas.

Clements: Raise your right hand. Do you swear to tell the truth, the whole truth and nothing but the truth?

Lucas: Yes, I do.

Clements: Ok, great. Thank you and you have 15 minutes to talk with us about your request for variances.

Lucas: Ok, so, my wife and I as you see on the photos, we purchased this property. It is 2 lots and the first lot current has a residence on it. The second lot we weren't sure what the stipulations were on there, so we reached out to Anne Crecelius back in August, it was on August 12th. She noted that 2 separate lots and recorded as that, but we would probably need to go through these variances, and it would probably even need to be resurveyed. So, we employed we hired Bynum and Fanyo, which they have done work for us in the past. We went through and had them do surveys on the property. We started working on the current residence, which it was very poor condition. The only reason we considered purchasing the property is it was very run down, it was overgrown. The previous owner or tenant had multiple equipment things. It was really just in rough shape. So, we have since fixed that property. We have put a lot more money into that what we had anticipated. But we are working on these. We would like the variance setbacks so that we could put like a modular home or a nice structure on that lot to help to try to regain or initial investment. If we had known that this wouldn't be a buildable lot to start with, we probably wouldn't have maybe given the price that we did to start with, but we are working with it and yeah, making it happen. We have been working with the Health Department. We have applied for permits. There is a current septic tank on the property. So, my wife and I's thought was not knowing the condition, you know, there was a residence on there, not knowing what that was all about, our best thought was to have Bynum Fanyo apply for a new septic permit so that when we do build, we would like for it be according to county standards. We want it to be environmentally safe, so we went that route. I have not heard any reply back from the Monroe County Health Department but there could be something that we probably could have applied for like maybe a repair on the current system because there is one there, we just don't

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know what it is all about. We do want to do everything according to the Monroe County Standards and zoning and that is why we are here.

Davidson: Do you know where that current septic field is located if the lot is that size? Was it behind the house or to the side? Where was it?

Lucas: This is just a guess, ma'am, from where the property was from that picture from 2014, you see there is a residence there, my best estimate would be that any kind of current field would be to the back of the property in the kind of green, grassy area. Because the front was more so for like parking, in one of the other pictures you see a lot of vehicles and I wouldn't think that the septic would be up there. If I could give you an idea, where that house is right now, just directly behind it would be about where the current septic tank is, and I have got a picture in my phone looking at it through the lid. It looks to be about one thousand gallon tank. Some properties require larger tanks than that. So, that is what started our process was that it was the right capacity the septic system is working properly, not start using an old system and then it fails or be a problem.

Clements: Thank you. Mr. Loftman, do you have any questions?

Loftman: No.

Clements: If Skip is online, do you have any questions for Mr. Lucas?

Behrman: **Skip is no longer a part of the meeting.**

Clements: Ok, thank you. We do not have any further questions. We will take comments from the public and then you will have a 5 minute rebuttal period if people are speaking against your proposal.

Lucas: Ok On this address line do you want my home address, or do you want the address to the submit of the?

Clements: Staff, do you a preference? I think where you might be corresponded with is best. If there are members of the public who are here, who would like to speak in favor of this request, please come to the podium or if you are on zoom raise your virtual hand. If you are calling in by telephone, please press *9 to be recognized. Ok, if there are members of the public who are in opposition to this petition, please come to the podium, raise your virtual hand on zoom or press *9 to be recognized. So, there is no need for a rebuttal period. We turn now to our Board of Zoning Appeals for further deliberation, questions and/or a motion.

SUPPORTERS – VAR-23-15a, VAR-23-15b, VAR-23-15c – Fields-Lucas: None

FURTHER SUPPORTERS - VAR-23-15a, VAR-23-15b, VAR-23-15c – Fields-Lucas: None

REMONSTRATORS - VAR-23-15a, VAR-23-15b, VAR-23-15c – Fields-Lucas: None

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**ADDITIONAL QUESTIONS FOR STAFF –
VAR-23-15a, VAR-23-15b, VAR-23-15c – Fields-Lucas: None**

**FURTHER QUESTIONS FOR STAFF –
VAR-23-15a, VAR-23-15b, VAR-23-15c – Fields-Lucas**

Loftman: Well, sure. It seems to me that this is somebody who has bought a headache and who is upgrading it to make it, so it is better for public health and a useful piece of property, which he bought one that wasn't. The septic would concern me except for there is a septic system there and updating, upgrading that septic system has to be in the interest of public health. In light of those factors, **I move to approve VAR-23-15a, VAR-23-15b and VAR-23-15c on 5865 South Fairfax Road as requested by Mr. Lucas and his wife, with the conditions set forth in the packet.**

Clements: You don't believe that it would affect that value of adjacent properties or use of adjacent properties?

Loftman: Only for the better.

Clements: You do not believe it would be injurious to public health?

Loftman: Quite the opposite.

Clements: I will **second** that. If you would please call the roll.

Behrman: There has been a motion and a second. A vote in favor is a vote to approve to VAR-23-15a, VAR-23-15b and VAR-23-15c, with regards to the Minimum Lot Size, Minimum Lot Width and Side Yard Setback and that is with one condition of approval that being that VAR-23-15c, the reduced setback only applies to the area delineated on the site plan as published. I will call the roll. Margaret Clements?

Clements: Yes.

Behrman: Guy Loftman?

Loftman: Yes.

Behrman: Pamela Davidson?

Davidson: Yes.

Behrman: Motion carries 3 to 0.

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The motion in cases VAR-23-15a, Fields-Lucas Minimum Lot Size Variance to Chapter 804, VAR-23-15 b, Fields-Lucas Minimum Lot Width Variance to Chapter 804 and VAR-23-15c, Fields-Lucas Side Yard Setback Variance to Chapter 804, in favor approving the variances, with condition of approval, as stated in motion, carried unanimously (3-0).

Lucas: (Inaudible)

Clements: Oh, there is a typo on my packet. So, let the record reflect that the address on Fairfax Road is 5855 South Fairfax Road. Thank you very much Mr. Lucas.

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NEW BUSINESS

5. VAR-23-16

Zaricki Minimum Lot Size Variance to Chapter 804

One (1) 1.03 +/- parcel in Indian Creek Township, Section 23 at 8865 S Rockport RD, parcel #53-10-23-300-007.000-007

Owner: Bloomington Comm Radio Inc.

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

BOARD ACTION: Clements introduced the petition.

STAFF ACTION:

Brown: Thank you. So, this is one design standards variance from Minimum Lot Size from Chapter 804. The purpose of this is to construct a solar array for a radio tower that is already on the property. The variance was triggered by a commercial electric permit, C-23-44, an after-the-fact petition to place the solar panels next to the tower. A portion of the solar array has already been installed but not completely by my understanding. The subject parcel is only one acre but is zoned Agricultural/Rural Reserve, which has a minimum lot size...

Loftman: Excuse me, Mr. Brown, I am having a little trouble with the mic. Would you make sure you are speaking into a little closer?

Brown: I see. I apologize.

Loftman: Thank you, that helps.

Brown: The subject parcel is only one acre but is zoned Agricultural/Rural Reserve, which has a minimum lot size of 2.5 acres, thus a Minimum Lot Size Variance was triggered. Research into the property revealed that it may be pre-existing nonconforming. The purpose of the solar panels was confirmed by staff to be solely used on the property and will not be sold commercially. There was also originally a Side Yard Setback Variance because the proposed solar panel array would encroach by 2 feet into the side yard setback, which has a required setback of 50 feet in a commercial area. However, the petitioner has uploaded a new site plan that does comply with that setback standard, thus that portion of the variance was removed. Here is the location map and the site conditions map. The current zoning map. It is Agricultural/Rural Reserve in all adjacent areas except for to the east which is Institutional/Public. Here are photos from the site. The photo on the left is just the structure as well as the radio tower itself. You can see some of the solar panels in the back there. The picture on the right is just a better picture of solar panels that have already been installed. Here is the petition letter as well as the letter of consent from the property owner and here is the new site plan, which again complies with the side yard setback standard. Staff recommends approval of VAR-23-16 due to the pre-existing nonconforming nature of the lot.

CASE NUMBER	DETAIL	RECOMMENDED MOTION
VAR-23-16	Minimum Lot Size	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 VAR-23-16a due to the pre-existing, non-conforming nature of the lot.

QUESTIONS FOR STAFF – VAR-23-16 - Zaricki

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

Loftman: I do not.

Clements: Ok and if Mr. Zaricki is here or his representative, if you would like to come to the podium and please sign in. Then I will swear you in. I like your emblem on your shirt.

PETITIONER/PETITIONER'S REPRESENTATIVE – VAR-23-16 - Zaricki

Zaricki: Oh, thank you.

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

Zaricki: I do. My name is Ryan Zaricki.

Clements: Thank you. You will have 15 minutes.

Zaricki: Thank you for taking time to hear our petition. I actually hold, I wear 3 hats in this project. I am currently the owner and president of Whole Sun Designs. We are a local solar contractor based here in Bloomington. Over the pandemic, I joined WHFB as a volunteer DJ and I also over the pandemic joined Rotary Bloomington North as a member of Rotary International. So, my role in this has kind of been the hub of the project and essentially when I became a volunteer for WHFB they had expressed interest in putting solar panels on the radio transmission tower on Rockport Road, also known as Radio Ridge and I said, I can certainly help with that. Then within my rotary community they were asking if there were nonprofits in town that would be interested in a grant. So, I connected Rotary with WHFB. We got a grant for basically a base system and that is what is installed now, is a solar array that is designed to expand in the future. So, that is where the petition is actually for a larger array than what is currently installed. But we basically utilized the rotary grant to lay the groundwork for a much larger array and we got the system installed. It was very cold winter day. I think it was January or February. But the idea is as funding through the radio station became available that we would be able to expand it down the road. My role at Whole Sun Designs we essentially sold the radio station equipment at cost and then I also acted as essentially the project manager. What got us here is the fact that admittedly I didn't have my ducks in a row. We started building this out before we had the permits secured. I do this stuff all day every day. I have pulled hundreds of electrical permits in Monroe County and this one just fell through the cracks. We didn't have the system properly permitted when we started the installation. Therefore, we are coming back after-the-fact asking

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for the variance. So, I apologize for that, and I own up to that mistake that was made by us. Hopefully we can make this work and not have to do major retrofits. But that is ultimately up to you all. I am open to any questions that you might have.

Davidson: The power that those solar panels generate, will it fully power the radio station?

Zaricki: Yes, during the day. The site is interesting in that it is almost a straight baseline load, so, and Mark Hood, who is on the Board of Directors for the radio station is here as well. Is that drawing like 2 kilowatts of power consistently? I forget. The Tower basically draws consistent power to transmit the radio signal. The only thing that really changes is the small brick building there houses the equipment that transmits signal and there is also a window unit air conditioning that they turn on during the summertime which obviously matches up well with solar production. But the air conditioner keeps the equipment cool. Other than that, it is consistent. At peak production the system is currently designed to essentially cover the load of the transmission tower and the air conditioning unit. We had discussed adding battery storage so that we could store solar power during the day and run the tower off of the stored solar power at night. I think in the future that is definitely a possible add on. Currently there is a natural gas generator, a propane generator out there for power outages. So, the battery and the solar would actually add resiliency into the system. So, if the grid were to ever go down that there would still be power available. But that would be future add on.

Davidson: I was going to ask about storage. Thank you so much.

Clements: Mr. Loftman, do you have any questions?

Loftman: Yes. During the day it runs fully off of the solar. At night you all continue to broadcast, as I understand it, as I hear it, and will you be on the grid night?

Zaricki: Correct. This is as grid tied solar array, so we are basically running in parallel with the utility grid. At night whenever the solar is not producing the system just draws off of the utility grid as it normally would. On hazy days whenever the system isn't producing enough power to run everything or on rainy days, we would just draw the balance off of the utility grid as well. If there is any excess production, we are able to send it back onto the utility grid and get a small amount of money for it that would offset the power that we would draw at night. But we are not an excess energy producer. It is just producing power that is used onsite.

Loftman: Thank you.

Zaricki: Sure.

Clements: Ok. We are going to hear from the public now and if there is anybody in opposition to your petition you will have a 5 minute rebuttal period. Thank you, Mr. Zaricki.

Zaricki: Thank you very much.

Clements: Are there members of the public who are present in this room or who would like to

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speaking in favor of this petition? If so, please come to the podium. If you are online on zoom, please raise your virtual hand. If you are calling in by telephone, please press *9 in order to be recognized. Is there a member of the public who would like to speak in opposition to this petition please either come to the podium, raise your virtual hand on zoom or press *9 on the telephone. If there is no one, we bring it back to the Board of Zoning Appeals for further discussion and/or a motion.

SUPPORTERS – VAR-23-16 – Zaricki: None

FURTHER SUPPORTERS - VAR-23-16 – Zaricki: None

REMONSTRATORS - VAR-23-16 – Zaricki: None

ADDITIONAL QUESTIONS FOR STAFF – VAR-23-16 – Zaricki: None

FURTHER QUESTIONS FOR STAFF – VAR-23-16 - Zaricki

Davidson: I think **I am ready to move that we accept VAR-23-16, Zaricki Minimum Lot Size Variance to Chapter 804 for installation of solar panels at 8865 South Rockport Road.**

Clements: **Due to the pre-existing nonconforming nature of the lot** would that be?

Davidson: **Yes**, thank you. I appreciate that and we should also mention **with the new design, with the setback corrected.** But that may be implicit.

Clements: I will **second** that then.

Behrman: There has been a motion and a second. A vote in favor is a vote to approve to the Zaricki Minimum Lot Size Variance, VAR-23-16. Guy Loftman?

Loftman: Yes.

Behrman: Pamela Davidson?

Davidson: Yes.

Behrman: Margaret Clements?

Clements: Yes.

Behrman: Motion carries 3 to 0.

The motion in case VAR-23-16, Zaricki Minimum Lot Size Variance to Chapter 804, in favor approving the variance, carried unanimously (3-0).

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NEW BUSINESS

6. VAR-23-5

Sojourn House Inc AMENDED Use Variance to Group Home Class II in Chapter 802

One (1) 7.73 +/- acre parcel in Benton South Township, Section 33 at 7505 E Kerr Creek Road, parcel #53-06-33-200-003.000-003.

Owner: Sojourn House, Inc.

Zoned AG/RR, ECO3. Contact: tbehrman@co.monroe.in.us

BOARD ACTION: *Petition was removed from agenda motion and vote.*

DRAFT

NEW BUSINESS

7. VAR-23-25a

Hupp Minimum Lot Size Variance to Chapter 804

8. VAR-23-25b

Hupp Minimum Lot Width Variance to Chapter 804

One (1) 1.27 +/- acre parcel in Bean Blossom Township, Section 32 at 8448 W Chafin Chapel RD, parcel #53-03-32-100-023.000-001.

Owner: Hupp, Michael J & Anna C.

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

BOARD ACTION: Clements introduced the petition.

STAFF ACTION:

Brown: Thank you. As you said this is for 2 design standard variances, Minimum Lot Size and Minimum Lot Width, both to Chapter 804. The petitioner intends to build a single family residence. This variance was triggered by a residential demolition permit, R-23-8. The petitioner intends to build a single family structure at this property. The prior home on this lot was granted a demolition permit in January of 2023. The lot is currently without a residence. However, the property is only 1.27 acres in area while the minimum lot size for this zoning district is 2.5 acres. It was also found that the lot was only 175 feet across at the site of proposed building while the minimum lot width for a parcel zoned AG/RR is 200 feet at the building line. Research into the history of the property suggested that the lot may be pre-existing nonconforming. There are also 2 accessory structures on this property, both car sheds that were constructed in the year 2000 according to the GIS Elevates Property Report Card. One measured at 660 square feet while the other measured at 240. A site visit has shown that both structures have been removed and again a single family dwelling was removed earlier in 2023 and that was constructed in 1971. If the variance is approved the petitioner will be permitted a to file a residential building permit to place a proposed home. If the petition is denied the petitioner will not be permitted to construct a residence on the property. Here is the location map and the slope map of the property. The image on the right, the site conditions map, that still shows the 2 car sheds as well as the home that was demolished earlier this year. Here is the Comprehensive Plan map and the current zoning map. An aerial view of the lot is on the left. Again, that shows all 3 structures that have since been demolished. The image on the right shows the bear area where the home once stood. Here is the petition letter for the Board of Zoning Appeals. Staff recommends approval of VAR-23-25a and VAR-23-25b due to the pre-existing nonconforming nature of the lot.

CASE NUMBER	DETAIL	RECOMMENDED MOTION
VAR-23-25a	Minimum Lot Size Variance	Approval
VAR-23-25b	Minimum Lot Width Variance	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 VAR-23-25a and VAR-23-25b due to the pre-existing non-conforming nature of the lot.

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QUESTIONS FOR STAFF – VAR-23-25a & VAR-23-25b - Hupp

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

Loftman: No.

Clements: Ok. With that being said, if the petitioner is here in the room, would you like to come and speak to us or if they are online? Anna Hupp. If you could unmute Anna Hupp. Ms. Hupp, please raise your right hand and do you swear to tell the truth, the whole truth and nothing but the truth?

**PETITIONER/PETITIONER'S REPRESENTATIVE –
VAR-23-25a & VAR-23-25b - Hupp**

Hupp: I do.

Clements: Ok, thank you. You will have 15 minutes.

Hupp: Ok. We live at the house next door, and we bought that home when the neighbor unfortunately passed. The house was in disrepair. It had a lot of mold and other issues with it, so we decided to remove the home. We are wanting to build a home on this lot to put my parents in so they will be closer beside us. We will follow whatever rules you want us to follow. Other than that, I don't know what to say. We are just wanting to get my parents closer to us, so this seemed like a good idea instead of selling our house and trying to buy a bigger property with 2 houses on it.

Clements: Are you still connected?

Hupp: I am.

Clements: Ok. Are you finished? I am sorry, I don't want to interrupt you.

Hupp: Yes.

Clements: Ok, thank you. We are going to hear from the, I will see if my colleagues have any questions for you. Ms. Davidson? Mr. Loftman?

Loftman: No.

Davidson: It looks like by the pink line we are looking at by the picture that house is it going to in the front yard? Tell me exactly where this site is? Where was it demolished? Where is it going to appear with the house that is already there?

Hupp: There is a photo in the packet of kind of where we are going to put the home at.

Brown: My apologies, I forgot to include that in the slide show. It is on page 205 of the packet.

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Loftman: Can you project that for us? Is that easy?

Brown: Yes, one moment please.

Davidson: There it is, right there.

Clements: There it is.

Davidson: That is very helpful, thank you.

Clements: Thank you.

Brown: Again, I apologize for forgetting to include that.

Clements: That's ok. We would like to invite members of the public that would like to speak either in favor or in opposition to this petition. Please come to the podium, raise your virtual hand or press *9 on your telephone to be recognized. If you would like to speak about this petition, please indicate that you would like to be recognized. There is no one. Coming back to the Board of Zoning Appeals if there is further discussion and/or a motion.

SUPPORTERS – VAR-23-25a & VAR-23-25b - Hupp

FURTHER SUPPORTERS - VAR-23-25a & VAR-23-25b - Hupp

REMONSTRATORS - VAR-23-25a & VAR-23-25b - Hupp

ADDITIONAL QUESTIONS FOR STAFF – VAR-23-25a & VAR-23-25b - Hupp

FURTHER QUESTIONS FOR STAFF – VAR-23-25a & VAR-23-25b - Hupp

Davidson: **I would like to move that we accept VAR-23-25a, Hupp Minimum Lot Size Variance to Chapter 804 and also VAR-23-25b, Hupp Minimum Lot Width Variance to Chapter 804 for property located at 8448 West Chafin Chapel Road, due to the pre-existing nonconforming nature of the lot.**

Clements: I **second** that.

Behrman: Alright there has been a motion and second. A vote in favor is a vote to approve the Hupp Minimum Lot Size Variance and Hupp Minimum Lot Width Variance, VAR-23-25a and VAR-23-25b. Guy Loftman?

Loftman: Yes.

Behrman: Pamela Davidson?

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Davidson: Yes.

Behrman: Margaret Clements?

Clements: Yes.

Behrman: Motion passes 3 to 0.

The motion in cases VAR-23-25a, Hupp Minimum Lot Size Variance to Chapter 804 and VAR-23-25b, Hupp Minimum Lot Width Variance to Chapter 804, in favor approving the variances, carried unanimously (3-0).

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Clements: We are moving on, there is one other administrative matter. Someone did raise their hand and ask if it was possible to still speak about VAR-23-4 and that case was decided. That was the....

Behrman: That was the Bloomington Self Storage. The one that was withdrawn by the petitioner.

Clements: Ok, yes. Ok, thank you. So, we are moving on. No, it is not possible to speak about that. It was withdrawn by the petitioner, and it was not heard tonight.

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NEW BUSINESS

9. VAR-23-26

Halter Rear Yard Setback Variance to Chapter 804

One (1) 0.58 +/- acre parcel in Richland Township Section 2 at 6565 N Maple CT, parcel #53-04-02-202-002.000-011.

Owner: Halter, Lisa

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

BOARD ACTION: Clements introduced the petition.

STAFF ACTION:

Smith: Thank you. The request is one design standards variance, Rear Setback to Chapter 804. The purpose is to construct an approximate 1,200 square foot pole barn structure at 6565 North Maple Court. The proposed location is 25 feet from the rear property line. AG/RR requires structures in the rear setback to be 35 feet from the property line. The petitioners have applied for a residential pole barn structure permit and that is identified as R-23-544 where the concern of the rear setback was discovered. The petitioners have also applied for a now approved residential demolition permit to remove a previously existing shed structure in order to build the pole barn structure in its place. It is located in Richland Township. The site conditions map doesn't reveal any environmental concerns with the property. It is relatively flat. This is some aerial imagery of the property. You will notice here on the screen that is where the previous shed structure used to exist and that has since been approved to be demolished. These are some site photos of the property as it currently stands. It is in a residential neighborhood. There is a 15 foot utility easement that is not of concern with regards to the location of the proposed structure. This is the petitioner's site plan that was submitted to staff under their residential pole barn structure permit. This is just a snippet of their construction plans. These were also included in the packet as well. This is the petitioner's letter to the BZA also included in the packet stating their reasons for requesting the variance. This is one letter of support from an adjacent property owner. This was also included in the packet as well. Staff did receive an additional letter of support earlier today. So, this was not in the packet, so I will just leave it up here for a brief moment. Staff recommendation, staff does recommend denial of the Rear Yard Setback Variance request from Chapter 804. Specifically in regard to practical difficulties having not being met, specifically C, which is the setback issue can be more effectively addressed through the relocation of the development/building/structure. If the variance request is denied, the petitioner will be required to build the structure at the 35 foot rear setback and comply with all other design standards. However, if the variance is approved the petitioner may continue with their building permit as proposed.

CASE NUMBER	DETAIL	RECOMMENDED MOTION
VAR-23-26	Rear Yard Setback from Chapter 804	Denial

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

Recommended Motion Conditions or Reasoning:

Deny the rear yard setback variance: Practical difficulties are not met, specifically "C". The

setback issue can be more effectively address through a relocation of the existing development/building/structure.

QUESTIONS FOR STAFF – VAR-23-26 - Halter

Clements: Ok, great. Thank you. Do members of the Board of Zoning Appeals have questions for staff?

Davidson: Has staff gone out, you always go and do site visits. The letters from the neighbors that probably are not here, say that there are practical sight lines how it sits, access, crowding the house, those kinds of things. Do you all have a physical sense of that from looking at the property or are you allowed to walk on the property to even look at that? I was just wondering if that is a very real concern because in a neighborhood like that where the properties are like pie shaped everybody has a closeness automatically.

Smith: That is a really great question. I would probably defer to the petitioner because they would have a better to describe. But, yes, I was able to walk the property. With regard to the zoning type it is explicitly clear that it requires 35 foot rear setback.

Davidson: Thank you.

Loftman: What is west of the property? This is a little development it looks like and what is west of that?

Smith: On the right side of the screen that is the direction facing west and when you look at the site photos the first two, that is that same direction facing west.

Loftman: So, it looks to me from these photos there is nothing close. Nobody's home is adjacent to this.

Smith: Sorry, say that one more time.

Loftman: I'm sorry. I always tell people to use the microphone. It appears to me that there is no residence that is anywhere particularly close to this property line behind to the west.

Smith: There is a property directly west. In the first photo it is kind of off to the left side of the screen. But there are adjacent properties all around. They are surrounded by housing.

Loftman: It looks to me that they are well back from the property line. Is that consistent with your observation.

Clements: the home seemed to be forward, and this is toward the rear, which tends to be the habit in that neighborhood, it appears.

Loftman: Right, right, ok. Thank you.

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Clements: That is my understanding, but the petitioner can correct me if the petitioner is here. Is Ms. Halter here or is she online? Oh, the petitioner or the petitioner's representative please come to the podium, sign in and then we will swear you in. Would you please raise your right hand, state your name and do you swear to tell the truth, the whole truth and nothing but the truth?

PETITIONER/PETITIONER'S REPRESENTATIVE – VAR-23-26 - Halter

Halter: My name is Nick Halter and yes, I do.

Clements: Thank you very much and you will have 15 minutes.

Halter: Ok, thank you for your time. I will just start off it is pretty straight forward for me at least. The question you had about what is to the west of the back of our property, it is an open lot straight back behind us. One of the letters that we received from Mr. Houchin, if you are looking from the back of our house, you are facing, you are looking west. So, Mr. Houchin's house would be kind of northwest and then there is another house that is southwest of that middle lot. If that makes sense. The pie shaped. I really liked that. That is really kind of why we are trying to change this setback is because the back of our property it does open up. From the front to the back, it does open up. The 35 foot offset obviously puts it closer to the house or closer to the front of the property. As we move back to the property the structure no longer moves back but it also moves to the side. Because of the shape of the property. So, the 10 foot distance, it really is a drastic change just because it goes back and off to the side. That is where we are at with that. We have talked with all of the adjacent homeowners, and we haven't had any concerns or anything like that. That is the straightforward part.

Clements: Mr. Halter, I just wondered if you would say that the shape of the property is a practical difficulty with respect to the aesthetic that both you and your neighbors currently enjoy.

Halter: No.

Clements: We are required to find a practical difficulty in order to grant your variance and so the shape of the property is unique, and I think what I was hearing you say was that it might be a practical difficulty that requires the variance.

Halter: I guess I am really not understanding what you mean by practical difficulty.

Clements: The shape of the property would indicate that the structure that you wish to place would be better suited elsewhere because of the shape of the property and also what you and your neighbors enjoy right now in terms of the aesthetic.

Halter: Yes, yes, I think that the variance that we are going for is going to help put with that as far as setting that back.

Clements: Ok, great. Thank you. If there are any arguments against this request, we will hear from you again. But Ms. Davidson has a question.

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Davidson: One quick question. The size of the pole barn does that impact how it is placed on the site? I mean, is the size pre-determined, standardized or whatever is going to fit in that space?

Halter: No, the size of the pole barn doesn't really, we had to determine the location of the pole barn based on its size. That spot right there it is just as wide open, straight back spot. It sets back from all of the houses on our cul-de-sac and also on Rhinestone Drive, the subdivision behind there. It doesn't encroach on anyone's really property or house or anything. It literally pushes it back from everything. Aesthetically pleasing, I think it is going to be a little more aesthetically pleasing for not only us but really everyone around.

Clements: So, that is more practical.

Davidson: Thank you.

Clements: Ok, is there any member of the public that would like to speak in favor of this petition? Please come to the podium, raise your virtual hand on zoom or press *9. If there is a member of the public who would like to speak in opposition to this petition, please make yourself known by either coming to the podium here in this room, raising your virtual hand on zoom or pressing *9 on your telephone to be recognized. We see no public comment. We have the letters from your neighbors. So, we are going to return to us for further discussion and/or a motion. Thank you, Mr. Halter?

Halter: Thank you.

Clements: Do you have any further discussion?

SUPPORTERS – VAR-23-26 – Halter: None

FURTHER SUPPORTERS - VAR-23-26 – Halter: None

REMONSTRATORS - VAR-23-26 – Halter: None

ADDITIONAL QUESTIONS FOR STAFF – VAR-23-26 – Halter: None

FURTHER QUESTIONS FOR STAFF – VAR-23-26 - Halter

Loftman: It seems like there are serious practical difficulties that make this proposal helpful to the owner and without any injury to the adjoining property, the neighbors who have expressed any opinion and support it. In light of that, **I move approval of VAR-23-26, for Halter Rear Yard Setback on 0.58 acre parcel at 6565 North Maple Court.**

Clements: I **second** that.

Behrman: There has been a motion and a second. A vote in favor is a vote to approve the Halter Rear Yard Setback, VAR-23-26. Pamela Davidson?

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Davidson: Yes.

Behrman: Guy Loftman?

Loftman: Yes.

Behrman: Margaret Clements?

Clements: Yes.

Behrman: Motion passes 3 to 0.

The motion in case VAR-23-26, Halter Rear Yard Setback Variance to Chapter 804, in favor of approving the variance, with findings as amended in motion, carried unanimously (3-0).

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NEW BUSINESS

10. VAR-23-27

Smelser Rear Yard Setback Variance to Chapter 804

One (1) 0.05 +/- acre parcel (condominium) in Perry Township, Section 40, at 614 W Soutar DR, parcel #53-01-40-379-000.000-008.

Owner: Smelser, Sheila & William.

Zoned RM7. Contact: acrecelius@co.monroe.in.us

BOARD ACTION: Clements introduced the petition.

STAFF ACTION:

Crecelius: Thank you. We are off of, I believe it is pronounced, Soutar Drive. This is a condominium.

Loftman: In the mic, please. Try to speak into the mic more directly and then I will be able to hear better.

Crecelius: This is off of Soutar Drive. This is a condominium plex called Quail Ridge Condominiums. It was platted in 1975. The area is zoned Multi-family Residential 7, which is RM7. Just to familiarize yourself with the area we are south of the Bloomington Country Club Golf Course. The petitioner is requesting one design standards variance from Chapter 833. They submitted a building permit in order to remodel an existing deck into a 176 square foot sunroom addition with a new 230 square foot elevated deck. This zoning district, RM7, requires a rear yard setback of 25 feet. I am going to skip ahead just a little bit. Ok, so here is the Quail Ridge Condominiums Plat from 1975. The existing condominium complex is located approximately 18 feet from the rear property boundary. Planning staff has found no documents to assist or clarify the original 1975 platted setback. It was never specified. So, because of the following which is 850-6, interpretation conflict inseparability under the Subdivision Control Ordinance it specifically states that the provisions which are more restrictive and which impose higher, greater standards shall control, which would be the 25 foot rear yard setback. I will jump back a little bit. The petitioner's representative had provided some good detail. Here on the screen is just a zoomed in view of an existing site plan superimposed on the plat. We can kind of see the existing footprint of the Smelser's portion of the condo. You can kind of see a dotted line that shows the 25 foot setback. On this slide, it is very faint, but they have added the multiple setback lines of varying width. So, I have a zoomed in and kind of added my own color touches so that you can see. This is the proposed new footprint for that sunroom and elevated deck addition. They are requesting a 12 foot setback instead of a 25 foot setback. Here they have kind of outlined with the dotted dashed lines the various setbacks. The closest being the 25 feet. Ok, so just a couple of site photos. Here is the condo from the front and here is the existing deck that would be turned into the sunroom and have an additional elevated deck added onto it. Just to run through some of the architectural plans that this would be the finished design. This would be the finished footprint. The is the demolition floorplan. That is the existing elevated deck. On the left you have the existing architectural rendering of the home and on the right is the proposed architectural rendering. So, where that elevated deck is you can see it turns into a sunroom with a new deck on the right, bottom right. The petitioner's representative included a letter and one unique thing about this situation is because the platted condominium is within a Homeowners Association the covenants and restrictions of the plat do require approval for any addition. We

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did include that on the right side of your screen is the approval under the Homeowners Association for Quail Ridge. Ultimately, the staff recommendation is to deny the Rear Yard Setback Variance from Chapter 833 simply because there have been no practical difficulties demonstrated. Does anybody have any questions?

CASE NUMBER	DETAIL	RECOMMENDED MOTION
VAR-23-27	Rear Setback from Ch. 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:

No practical difficulties demonstrated.

QUESTIONS FOR STAFF – VAR-23-27 – Smelser

Davidson: Yes, I have one. The letter that I just reviewed again when you showed it on the screen said that many, many of the neighbors, Mr. Mathew's letter, said that many of the neighbors already have those decks that extend out into this area. Did you observe that? Is that a true observation?

Creceilius: Some of the homes have additions that seem to exceed that 25 foot. I did not see any previous building permits so whether or not they were done before 1997 or if they received variances, I can't really verify.

Davidson: Because it is condominiums, they are linked together so the consistency I can understand that as a valid perspective.

Clements: Have we heard any negative comments? Have we heard any negative responses to this proposal?

Creceilius: Have I heard from any public? I have not taken any calls from the public.

Clements: Ok. If the petitioner or the petitioner's representative is here and would like to address us and tell us what your thoughts are on this, please come to the podium, sign in and I will swear you in. How are you?

PETITIONER/PETITIONER'S REPRESENTATIVE – VAR-23-27 – Smelser

Rogers: Ok. How about yourself?

Clements: Good, thanks.

Rogers: My name is Noah Rogers. I am the owner of Rogers Remodeling.

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Clements: If you would be so kind, Mr. Rogers, to speak into the microphone because we are getting older and we can't hear without this audio help.

Rogers: Yes.

Loftman: And members of the public can't hear either. It is not just us.

Clements: But it is especially us.

Rogers: I am a little hard of hearing at age 40. It is all of the loud noises that I have been around.

Clements: That is right, all of that hammering.

Rogers: Not to mention the military.

Clements: That will do it. If you would kindly raise your right hand and do you swear to tell the truth, the whole truth and nothing but the truth?

Rogers: I do.

Clements: Thank you. You have 15 minutes to talk to us about this.

Rogers: Ok, so, like the letter does state there are several decks that have been converted that just looking in their back yard you can see a couple of neighbors. Whether they applied for building permits I am unsure or if they just went ahead and did it. But don't take this as bible gospel because I am not 100% sure about this but I am pretty sure what I have heard is this was owned by the golf course for a lot of years, the country club, Bloomington Country Club. Once that was done the setbacks are really difficult in that are to do anything on there and there is already an elevated deck there. I would understand if we had to rework the deck a little bit maybe but if we could at least get the variance at the very minimum for the sunroom and maybe redesign the deck if needed. But that is my main argument is that and there is nothing behind them. It is not going to be in the way of any golfers. There are other properties that are really close to the property line as well if you go along the line of duplexes. Anyway, that is about all that I have. If I have any questions my architectural designer is also here for the project along with the homeowners if you guys have any other questions.

Clements: Ms. Davidson? Mr. Loftman?

Davidson: My question, if you will remain there for a minute, is for staff. Your resuscitation of the facts showed there was no historical basis for this particular setback. When you look at the photos you can see part of the golf course, so, it has got to be for safety, I would think. Because of flying balls and so on. I would think. But you could find no, the ones we usually have for slope, erosion, sinkholes, none of those existed with this property that you could tell. That setback was just in the original plat documents and so it is. Did I get that right?

Creclius: That is correct. We simply haven't found a setback that they used at that time when

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they built the condominiums, haven't found any proof of additions that have happened in the 50 some years. When I went on site, I did measure from the existing deck to what appears the country club mows as their property boundary, although it's not necessarily representative. It is a nice, curvy landscaped kind of marked area. It is farther back than that, than what the actual property line is most likely. But legally it looks like it provided a little more space than the country club.

Davidson: Thank you.

Loftman: Was there a photo, an aerial photo of this house showing the golf course?

Clements: The pink.

Loftman: Mr. Smelser, is it the golf course that is behind this house?

Rogers: Yes, that is correct. The back yard does abut. You can see a bunker out his window I believe.

Loftman: Right so, you are not going to be putting this close to somebody's back yard who lives behind you.

Rogers: No, sir.

Loftman: We are putting it close to a sand trap, close to a sand trap.

Rogers: Yes.

Loftman: And you are willing to accept the risk?

Rogers: Yes, I am the contractor, but they are right there and yes, they are willing to accept the risk.

Loftman: Of air and golf balls.

Rogers: We plan on using putting Anderson grade windows and they should not break. We are hoping.

Loftman: Thank you.

Clements: Thank you very much. We are going to hear from the public and if there is any negative comment you will have a chance to return and rebut it. Ok, thank you. Are there members of the public who would like to either speak in favor or in opposition to this? Oh, yes, sir. Come to the microphone and please sign in. Please raise your right hand, state your name and do you swear to tell the truth, the whole truth and nothing but the truth?

Matthews: Yes, I do, and my name is Sean Matthews.

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Clements: Thank you, Mr. Matthews. Please talk with us about this.

Matthews: If we could just pull up the site plan, the proposed one, if you don't mind. You made a good point, which I am the architectural designer. They hired me to help them out with this and if you look at the site plan I show the 25 foot setback, that is the closes one to the house. That is one that is what is zoned right now and if you look at that it even clips through the existing house, not only the deck as well. But if you look at the properties next to it on the bottom left you see it goes through their house, in the top right it goes through their house and eventually more and more as you go further up that site plan it starts cutting through people's house. So, that is why when it comes to the setback with the 25 foot it doesn't make too much sense to me. But looking at all of those properties I mean we could do it probably with the 15 yard setback, even including the deck.

Loftman: 15 foot.

Matthews: 15 foot, yes. But the 12 foot setback is what everybody else is clearance at. So, that is why I think we should apply for the 12 foot setback just to give us a little bit more leeway, you know. But really this addition is, I think you guys described it perfectly, we are just removing the deck and in place of the deck we are adding a sunroom and we are just extending the deck from the sunroom enough for a door to swing open and it still be comfortable on the deck and then adding a larger deck portion on the right. Obviously, I am in favor for it. I think for fairness of all of the other properties next to it, I think it's a good request. So, that is all that I have got to say on it.

Clements: Thank you for showing up tonight and for talking to us about that. I am going to turn now to the public. Are there members of the public who would like to either speak in favor or in opposition to this petition? If so, please come to the microphone or raise your virtual hand on zoom or press *9. Yes, please come. I have always loved those condominiums. I think it is a great location. They are tucked in there behind the golf course. Please raise your right hand. State your name and do you swear to tell the truth, the whole truth and nothing but the truth?

SUPPORTERS – VAR-23-27 – Smelser

Williams: I am Pat Williams. I do.

Clements: Thank you, Ms. Williams.

Williams: I have lived at the country club in these condos for over 25 years. They were built in the mid 70's and the golf course is at an angle. I know that mine was added onto before we purchased it as many others have extended decks and there are 20 condos. The HOA has approved the design and I think there is no problem with this at all.

REMONSTRATORS – VAR-23-27 – Smelser: None

ADDITIONAL QUESTIONS FOR STAFF – VAR-23-27 – Smelser: None

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FURTHER QUESTIONS FOR STAFF – VAR-23-27 - Smelser

Clements: We appreciated how you secured your support from the administration, management and your neighbors. We appreciated that. Thank you, Ms. Williams. Is there any member of the public who would like to speak in favor or in opposition to this petition? Please either come to the microphone, raise your virtual hand or press *9 on the telephone. If not, we come back to members of the Board of Zoning Appeals for further discussion and/or a motion. I would just like to say that I think this looks like the perfect opportunity to kind of merge an update into a wonderfully valuable set and located property and it is being done consistent with the properties around them. The setbacks were murky at best. **I think I am very much in favor of it because I don't think it injures anybody. I think it enhances the value of the properties around them and that this would be the minimum variance necessary to eliminate practical difficulties for the enjoyment of their property and their updated version of their home.**

Davidson: Were you talking about the 12 or the 15 foot setback?

Clements: Both. What do you think?

Davidson: I think we are ready to make a motion.

Clements: Could that be a motion?

Davidson: I heard it. I think you should make a motion.

Clements: **That was a motion. Ok, we are making a motion to approve.**

Loftman: I am sorry, I am confused. The 12 and 15?

Clements: No, it is just...

Davidson: What does the application show, the 12 or the 15?

Crecelius: The ideal scenario is the 12 foot setback.

Clements: And they are also asking for a 15?

Crecelius: No, Mr. Rogers mentioned the 15 foot setback as an alternative if you were not appreciative of the 12 foot idea. That would require the proposed deck to be reworked and redesigned.

Davidson: And we did here the witness say that the 12 foot gives them greater flexibility in case something goes awry. Did I not hear the correctly?

Loftman: Yes.

Davison: So, 12 works on their side.

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Loftman: I don't think we need both.

Clements: That is right, thank you.

Loftman: The motion is for the **12 foot setback**, which I **second**.

Clements: So, it has been seconded and we will just move along here.

Behrman: Who made the motion?

Clements: I did.

Behrman: Margaret and the second was, ok, thank you. There has been a motion and a second. A vote in favor is a vote to approve the Smelser Rear Setback Variance VAR-23-27. Pamela Davidson?

Davidson: Yes.

Behrman: Guy Loftman?

Loftman: Yes.

Behrman: Margaret Clements?

Clements: Yes.

Behrman: Motion passes 3 to 0 to allow a 12 foot setback.

The motion in case VAR-23-27, Smelser Rear Yard Setback Variance to Chapter 804, in favor of approving the variance, with findings as amended in motion, carried unanimously (3-0).

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NEW BUSINESS

11. VAR-23-28

Norris Front Yard Setback Variance to Chapter 804

One (1) 0.24 +/- acre parcel in Perry Township, Section 17,
at 562 W Green RD, parcel #53-08-17-102-007.000-008.

Owner: Norris, Richene

Zoned RS3.5. Contact: acrecelius@co.monroe.in.us

BOARD ACTION: Clements introduced the petition.

STAFF ACTION:

Crecelius: Absolutely. We are just south of where this previous petition was, and you can notice on the map the condominiums to the north. We are again in an area zoned Single-family Residential 3.5, so, RS3.5. The property was platted with in the Country Clubs Manor Subdivision, 1954 as Lot 39. The petitioner had submitted a building permit application in order to add a roof to an existing front porch concrete entrance. The addition is proposed to be 9 by 8 and half for a total of 76.5 square feet. The front yard setback of 35 feet comes from the 1954 Country Club Manor Subdivision Plat. The site is zoned RS3.5, which would normally only require a 25 foot setback. The existing poured concrete entrance would not require any setback variance as is but in order to extend the roofline a variance is the minimum required. I am going to jump forward a little bit. This is the existing home and the proposed work. So, not a large addition to the front, just simply a roofline. They provided a site plan here which shows the proposed work. They have shown that 26 feet would probably accommodate the work, but they are requesting a front setback of 25 feet just for any potential wiggle room with construction. Staff is recommending approval of the front setback variance from Chapter 833. The recommended motion and the reasoning is that the setback is unique to 1954 plat and doesn't reflect the zoning ordinance setback that would be required and that covering the existing entrance and steps would protect the entrance from weather hazards. Does anybody have any questions?

CASE NUMBER	DETAIL	RECOMMENDED MOTION
VAR-23-28	Front Setback from Ch. 833	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:

Setback is unique to the 1954 plat and doesn't reflect ordinance setback. Covering the existing entrance and steps would protect entrance from weather hazards.

QUESTIONS FOR STAFF – VAR-23-28 – Norris

Clements: Does anyone have any questions for staff?

Loftman: Not I.

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Clements: If the petitioner or the petitioner's representative is here and you would like to come to the podium and sign in. Please raise your right hand. State your name and do you swear to tell the truth and nothing but the truth?

PETITIONER/PETITIONER'S REPRESENTATIVE – VAR-23-28 – Norris

Norris: I do. My name is Richene Norris.

Clements: Thank you. You have 15 minutes to talk with us about this addition.

Norris: We just are trying to, the front porch structure is needing reworked because it is aging and since we were going to need to redo it I have always wanted it covered and I am also adding a new front door and I want that protected as well. We sat out to do that and that is when we found about the 35 foot setback, which the porch already encroaches upon when it was built. We are not adding any more to it, we are just covering it. So, I am just like, ok, I am here, and can I cover my porch that is already there. I am not going to add anything.

Clements: You have arrived to county government.

Norris: I just want to cover it. So, thank is it.

Clements: Ok, great do you have questions? Ok, we are going to hear from the public and if anybody says anything against it you will have a chance to return. Thank you. Are there members of the public who would like to speak either in favor or opposition to this petition? Please come to the podium, raise your virtual hand zoom, press *9 on the phone. That is either for or against. There is no one. So, we come back to us, and we talk about this and we make a motion.

Davidson: Any questions?

Loftman: No questions.

Clements: No questions.

SUPPORTERS – VAR-23-28 – Norris: None

FURTHER SUPPORTERS - VAR-23-28 – Norris: None

REMONSTRATORS - VAR-23-28 – Norris: None

ADDITIONAL QUESTIONS FOR STAFF – VAR-23-28 – Norris: None

FURTHER QUESTIONS FOR STAFF – VAR-23-28 – Norris

Davidson: **I am ready to move that we accept VAR-23-28, Norris Front Yard Setback Variance to Chapter 804, for property located at 562 West Green Road.**

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Clements: I **second** that. It looks like it is a pretty design, and it looks like it will foster community with people stopping by while you are porch sitting. It looks like so I second that.

Davison: I appreciate that in the recommendation staff said covering the existing entrance and steps would protect entrance from weather hazards. That is a plus.

Clements: That is a plus.

Behrman: There has been a motion and a second. A vote in favor is a vote to approve the Norris Front Yard Setback Variance, VAR-23-28. Margaret Clements?

Clements: Yes.

Behrman: Guy Loftman?

Loftman: Yes.

Behrman: Pamela Davidson?

Davidson: Yes, and I am happy for you.

Behrman: Alright.

The motion in case VAR-23-28, Norris Front Yard Setback Variance to Chapter 804, in favor of approving the variance, carried unanimously (3-0).

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NEW BUSINESS

12. VAR-23-29

Huston Front Yard Setback Variance from Chapter 804

Two (2) 1.19 +/- parcels in Bloomington Township, Section 18, at 5991 E State Road 45, parcel #53-05-13-400-003.000-004.

Owner: Huston, Joel

Zoned SR, CR, & ECO3. Contact: acrecelius@co.monroe.in.us

BOARD ACTION: Clements introduced the petition.

STAFF ACTION:

Crecelius: The petitioner is requesting one design standards variance from the Front Yard Setback requirement. The petitioner submitted a building permit in order to remodel and expand the existing roof system of existing residence. Upon review, Planning Staff identified that the front porch was added without proper permits and located within the front yard setback. It is located along East State Road 45, which is a major collector requires 35 feet of a front yard setback. There does not appear to be dedicated right-of-way, which means the front setback is measured from the edge of pavement. The porch structure is 24 feet from, edge of pavement. The petitioner has submitted an after-the-fact building permit application for the front porch and in order to allow the porch to remain within the setback, an encroachment 11 feet, this variance is the minimum requirement. I would like to note there was some concern originally with staff about the safety of porch in this location along the state road and we are happy to see that there is a guardrail along the curb. So, staff does feel a little better along that curb getting closer to the road. Here is the petition site. As you can see it if fairly close. You can see the guardrail and the curb on State Road 45. In 2014 this pictometry photo with the un-enclosed kind of wooden deck originally looked like, which would not have required a permit. Here somewhere in 2017 it was added into a roof. Staff is recommending denial the Front Setback Variance request. The reasoning for this is it was a self-created hardship by the previous owner and if denied that they should submit a demolition permit application through the Building Department.

CASE NUMBER	DETAIL	RECOMMENDED MOTION
VAR-23-29	Front Setback from Ch. 804	Denial

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

Recommended Motion Conditions or Reasoning:

Self-created hardship (previous owner). Submit demolition permit application through the Building Dept.

QUESTIONS FOR STAFF – VAR-23-29 – Huston

Clements: Ok, I have a question. First of all, has this gone through Highway? Is Highway online? No.

Behrman: This would be INDOT jurisdiction and to our knowledge the right-of-way is the edge

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of pavement.

Clements: Ok. The reason that they have to, the primary reason that you are recommending denial is that the porch was added without permission and then to compound that error would be problematic. Right?

Behrman: I believe that the porch used to have a different design. They have actually reduced some of the structural components in the front. But they are doing it the right way (correction to say setback-ttb). They are asking for permits for several parts of their home. So, not only does it allow for the front porch to stay but it allows for I believe a pre-existing nonconforming structure to have the gables, the roofline change and the back porch get confirmed, so, there are several components.

Clements: They are working with county, they are going through the Planning Department, and they really are not altering anything, they are just covering it, for the most part it is not an added area.

Behrman: It was added in 2017 by the previous property owner. They are trying to do right by a couple of permits that have been submitted.

Clements: I understand. Does anybody have any questions for staff?

Davidson: So, they found this out because it was the previous owner who had constructed this. The current porch as it is can it stay the way that it is or no, being so dangerously close to guardrail? It frightens me to look at that overhead. I could just see a car, well, we all could, I think.

Creceilius: This request is to keep the porch as it is.

Davidson: I see. It is to keep the porch as it is. Not to change it but to keep it.

Creceilius: So, it is 11 feet into the setback of 35 feet. The request is to keep it there as is.

Davidson: And you have said they have reduced some of the structural components already.

Creceilius: There was a building permit to remodel the roofline and through review staff found multiple things that were not permitted that we didn't necessarily review here. I believe the original house was right in the edge of meeting the front setback. But adding the front porch encroached by 11 feet.

Davidson: did you also tell us that if it had been an uncovered deck, it wouldn't have come under your jurisdiction?

Creceilius: Technically, they would have still required to meet a setback, but we never would have had a permit to review it. We also had a note originally that it kind of looked like a handicapped ramp back before and we wouldn't have necessarily enforced setbacks for a

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handicapped ramp. But since it became covered, it is absolutely under our purview and the Building Department's purview.

Davidson: I see. The covering tripped the wire.

Creclius: Yes, expanding the roofline is expanding the footprint of the structure.

Davidson: I see. Thanks so much.

Clements: But they are encouraged that there is a guardrail. So, it is time to hear from the petitioner. If you would please come to the podium, sign in and then. He doesn't have to sign in again, does he? You don't have to be sworn in again. So, you can just talk to us for 15 minutes.

Loftman: But restate your name so people know who is talking.

PETITIONER/PETITIONER'S REPRESENTATIVE – VAR-23-29 – Huston

Rogers: I wasn't under oath when I was sitting over there, right? That was a joke. My name is Noah Rogers with Rogers Remodeling. These people just bought this home last year as been stated. What they are proposing to do, why this all got brought up is because his roof is very badly damages. So, we had a structural engineer come in and do a redesign of the roof system and we are going to add a small gable on, small dormer, excuse me, for some extra height clearance in the attic. That is how this all got, once we submitted for permitting then we find out all of these things were done with no permit. He really doesn't want to lose his front porch and I don't blame them. I don't know how long it has been there. It looks pretty old. It is possible that it was just caught during the 2017 but I don't know if you guys have looked at the aerials from back then or not to see it. But it looks old. It looks like it has been on the house for a while. But that is beside the point. We really need the permit approved so whatever you guys decide. But he would prefer to keep his front porch, I am sure.

Clements: do you think that there is anything that you could do with your design firm to appease us as far as the family safety is concerned? Do you think there is anything that you could engineer to just predict a cloverleaf phenomenon from happening?

Rogers: Are we thinking more for like a vehicle hitting it or gravel flying off the road?

Clements: Primarily a vehicle.

Rogers: I would have to ask Joel, who is the homeowner, but I can't remember if it has, I believe it has a concrete porch?

Clements: Yeah, it does.

Rogers: And I think it has a concrete rail already. It has been a while. That is something that we could do. We could build a block wall around it, maybe, up 3 foot high.

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Clements: You can talk with them, but you have to be aware that this is our primary concern. So, that is our primary concern and why the rule is there.

Rogers: Yes.

Davidson: And the fact that goes with the house and not with this owner, so, the net owner will be between a rock and a hard place, perhaps.

Loftman: It seems to me that as is on a nice evening you could sit out there in your easy chair and have exactly the same danger from cars coming off road as if we grant this. This isn't going to increase the danger in any way.

Clements: That's right.

Loftman: It just increases the number of nice days per year when they can enjoy sitting out there.

Clements: That's true.

Loftman: But that doesn't particularly concern me. We are making it nicer. We are making it more useful without increasing the setback and these things that slip by we don't know how many years ago, it could have been a long time. How do we know it wasn't built when the house was?

Rogers: Yeah, we don't. Looking at it as a contractor it does seem old but and it is a shotgun house typical like you will see on South Rogers. It is the very same design, and they always had that small front porch. They were always a shotgun house with a small front porch on it. I am sure you guys have all seen it. That is why it seemed odd that it wasn't there originally, but it may not have been. We have no idea and neither do the homeowners.

Loftman: It could be original, for all we know.

Rogers: For all we know.

Crecelesius: If I may interrupt, it might be difficult to see on your screen because of the transcript. 2014 the front porch is not there and 2017 the front porch is there.

Loftman: Thank you. I missed that.

Rogers: Did it have a porch before, or did it not have a porch at all?

Crecelesius: Originally the porch was a corner and underneath the original roofline, so, it wasn't extended. From what I can tell it looks like the original corner porch that was under the existing footprint was filled in probably as a home addition and then the front porch was added 2015-2017.

Rogers: I see. That makes sense.

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Davidson: May I ask the staff is it the safety concern as well that we have expressed a big concern because of it being on that roadway and so on? Because he has told us it is concrete. Its got concrete all over. He said maybe I could make it safer if that is of concern. Is that important in your recommendation?

Creceilius: I mentioned earlier we were a little concerned about the site because of East State Road 45. But there is a guardrail. If you look on well, it is just the 2017 image right now but if you look at the curve farther to the north, there is a fairly extensive guardrail.

Davidson: That is the safety feature.

Creceilius: Yes. I would never not encourage additional safety. It is close. But that I would not worry so much about. Mainly I was just looking at our standards of approval and that it was a previous owner, but they did do it without permits. The current owner has been great with working with staff on other issues.

Davidson: Thank you so much. That is so helpful.

Clements: Ok, if there is anyone that would like to speak in favor of this petition, please come to the podium, sign in and then we will swear you in. Are you Mr. Huston?

Huston: Yes.

Clements: Great. Please raise your right hand, state your name and do you swear to tell truth, the whole truth and nothing but the truth?

Huston: Yes. My name is Joel Huston and yes, I do.

Clements: Thank you. You will have 3 minutes.

Huston: If you wouldn't mind, could you blow up the picture that is the front facing picture of the house?

Loftman: Please use the microphone.

Huston: What you see here in the picture what you can't see just beyond the right edge of the picture here is the guardrail there in the edge of the yard and what is also difficult to see from the aerial view from my house there is a very sharp 90 degree angel facing away from the house that the road curves. I have spent a lot of time on the front porch here and I have watched a lot of traffic go by the house here and I feel that the guardrail covers a very vast majority of the front yard to the extent that I do not believe there is a way a car could miss the guardrail and till be able to hit the porch. Because it extends so far into the yard and of the angle that the road curves away from the house. In addition, I believe there was a mention that the setback is measured at 11 feet. Is that correct? I believe what might have been measured was the corner rock to the road and that would correlate with the 11 feet. But the distance from the porch itself to the road is

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measured at 26 feet. So, a lot greater distance. That is also at the very closest point on the left half of the house, excuse me I meant to say front porch. On the right half of the front porch the distance from the front porch to the road would be above 30 feet. The distance. I believe that the proximity appears to be a lot closer which I would say would make it sound a lot more dangerous because cars would be able to be hitting the house a lot easier. As the homeowner who has bought this house, I do want to make sure I go through the correct process and that is why I am here talking about a permitting variance. But if you wouldn't mind to at least, I am the homeowner here and I did not build this front porch. It was built by the previous homeowner, and I would love to be able to keep my front porch.

Clements: It looks pretty. Thank you very much. We are going to hear from others. Is there anyone else who would like to speak in favor of this petition? Ok. Is there anyone that would like to speak in opposition to the petition? Ok. We come back to us for and for any clarifications that you would like to make about his setback measurements.

SUPPORTERS – VAR-23-29 – Huston: None

FURTHER SUPPORTERS - VAR-23-29 – Huston: None

REMONSTRATORS - VAR-23-29 – Huston: None

ADDITIONAL QUESTIONS FOR STAFF – VAR-23-29 – Huston

Crececius: Sure. I did measure onsite. The edge of the porch is 24 feet to the edge of pavement, which is where we would start, edge of pavement is where we would start measuring the setback. So, that is an encroachment of 11 feet into the 35 foot setback. So, you would approve 24 foot setback, basically as it exists now.

Clements: Thank you.

Crececius: You are welcome.

FURTHER QUESTIONS FOR STAFF – VAR-23-29 - Huston

Loftman: Got it. Thank you. I was confused. These things were there is a problem not of the owner's creation that got by earlier and he bought it. I guess he could have had a complete survey done and seen if it complied with all of the setbacks and it would be wiser if people did that. But he is sitting on his front porch now. It doesn't seem to make anything anymore dangerous. **It seems that the danger is not as substantial of a factor and that I find the petition sensible. It doesn't injure, no harm to the public, no harm to health, no harm, to any adjoining property owners or nearby property owners, so I move to approve the request.**

Clements: I **second** that.

Behrman: Alright there has been a motion and a second. A vote in favor is a vote to approve the

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Huston Front Yard Setback Variance, VAR-23-29. Margaret Clements?
Clements: Yes.

Behrman: Guy Loftman?

Loftman: Yes.

Behrman: Pamela Davidson?

Davidson: Yes, and I appreciate the conversation about safety. I really do. That was very important looking at those photos, so thank you.

The motion in case VAR-23-29, Huston Front Yard Setback Variance from Chapter 804, in favor of approving the variance, with findings as amended in motion, carried unanimously (3-0).

REPORTS:

Loftman: Before we adjourn, I would like to mention something. The way that the discussion didn't go on Sojourn House, I didn't get to express my feeling as to why I thought this was appropriate. Because there was the decision that we made appropriate because it was as somebody said a, perhaps a conflict between you can make an amended request but you can't present the same petition again. To me, the reason I feel that this is the same petition is yeah, they submitted other documents, but my recollection is they had said it would be up to 4 people. The original proposal was 4, as this one was. So, adding a written commitment that doesn't bring it closer into compliance. If they had originally applied for 8 and now, they were applying for 4 then it would be an amendment that would bring it closer to compliance. This amendment, if it is one at all in terms of the number of people, didn't change and to me if somebody cannot meet the not have to wait a year by filing an amended petition but it is not really a substantial amendment. It doesn't change anything in terms of what they are asking for. I don't feel that is and you can't just slap amended and put the same thing on it to me. Amendment has to be a substantive amendment. I see no substantive amendment to their original proposal. Adding the written commitment only takes it farther from the original 4. I think that they referred to potentially having 8 people there. So, to me there is no change and I think the integrity of our, the rule 8-4 requires that people not be able to just call it amended without changing things at all on the hope that we will vote differently.

Clements: Bring in the whole group of the public and through persuasion rather than substance think that it will change when we have already voted and decided.

Loftman: Right and I just wanted to say I understand they called it an amended petition. But I didn't see any meaningful amendments to the substance of the petition so I feel that this would be an abuse of the 6 month amended petition by just allowing anybody to just as I say, call it amended and hope that you get a second bite at the apple. They can wait a year and get a second bite at the apple. That is our rule. I don't think that they were complying with it, so I wanted to put that in the record of tonight's meeting. I sort of wish I had said it during the discussion of that. But it is hopefully not too late to put that in the record.

Davidson: I guess I would add to that. The 2 provisions seem contradictory. I was more than willing to defer to the staff's definition of substantive amendment because they have experienced more of those. So, it is a viewpoint, I think.

Clements: I think the process, as far as I understood it, was within 30 days they needed to file with the court, and they didn't do that. They didn't do that, and this second bite of the apple was insufficient, and we have the rules that if we start breaking them, we will be hearing every case two or three times.

Loftman: Exactly.

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Clements: As much as I love to come here and I am always willing to listen to the public, I spent extra time making sure that we hear from the public, on this case I didn't feel that way and that is rare. Very rare.

Loftman: There is a nominal amendment but there is no substantive amendment and that is why I feel that the commitment didn't make it better. It didn't make it any substantive different, so I don't feel that constitutes enough of an amendment to bring it in to the 6 month period for bringing up the petition.

Clements: It is the same. It is the same proposal.

Loftman: While we were still in this meeting and before we adjourn, I wanted to clarify my reason for seconding that motion. And if there is no other business before this...

Behrman: There were minutes that were not approved at the beginning of the meeting.

Clements: **I am going to abstain from that tonight. I didn't read the minutes.**

Behrman: Then **we do not have a quorum.**

Loftman: Ok, fine. You want to abstain, but can we pass the minutes with just 2 people?

Clements: No.

Loftman: Then let's roll that over to next month.

Clements: Thank you, everyone.

Loftman: Thank you.

Planning/ Behrman: No reports.

Legal/Schilling: No reports.

The meeting adjourned at 7:17 pm.

Sign:

Attest:

Margaret Clements, Chairman

Jackie N. Jelen, Secretary

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