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**BOARD OF ZONING APPEALS
Regular Meeting Minutes
December 5, 2018 - 6:00 p.m.**

CALL TO ORDER

ROLL CALL

INTRODUCTION OF EVIDENCE

APPROVAL OF AGENDA

APPROVAL OF MINUTES

November 7, 2018

CALL TO ORDER: Peter Kaczmarczyk, Chairman, called the meeting to order at 6:00 PM.

ROLL CALL: Peter Kaczmarczyk, Margaret Clements, Michael McNeil, Mark Kruzan

ABSENT: *Susie Johnson*

STAFF PRESENT: Larry Wilson, Director, Jackie Nester, Senior Planner, Tammy Behrman, Planner/GIS Specialist

OTHERS PRESENT: *None*

INTRODUCTION OF EVIDENCE:

Larry Wilson introduced the following items into evidence:

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

Monroe County Zoning Ordinance (as adopted and amended)

Monroe County Subdivision Control Ordinance (as adopted and amended)

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

Cases advertised and scheduled for hearing on tonight's agenda

The motion to approve the introduction of evidence carried unanimously.

APPROVAL OF AGENDA:

Motion to approve the agenda carried unanimously.

APPROVAL OF MINUTES:

Motion to approval of November 7, 2018 minutes, carried unanimously.

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OLD BUSINESS:

- 1. 1805-VAR-14 Schopp Conditions for Tourist Home Variance to Chapter 802**
One (1) 5.22 +/- acre parcel in Clear Creek Township, Section 21 at 9521 S Strain Ridge Rd. **Zoned AG/RR/ECO1.**
****CONTINUED BY PETITIONER TO 01/02/2019 BZA MEETING****

NEW BUSINESS:

- 1. 1810-VAR-35 Clark Zinnia Rear Yard Setback Variance to Chapter 804**
One (1) 0.37 +/- acre parcel in Clear Creek Township, Section 16 at 1231 E Zinnia DR. **Zoned ER.**
- 2. 1810-VAR-36 City Church of All Nations Sign Allocation Variance to Chapter 807**
One (1) 10.07 +/- acre parcel in Bloomington Township, Section 36 at 1200 N Russell Rd. **Zoned RE2.5/ECO3.**
****WITHDRAWN BY PETITIONER****
- 3. 1810-VAR-37 Oliver Wine Company LLC Height Variance to Chapter 804**
One (1) 12.75 acre parcel in Washington Township, Section 21 at 150 E Winery RD. **Zoned AG/RR.**
- 4. 1811-VAR-38 Rogers-Munson ECO Area 1 Variance to Chapter 825**
5. 1811-VAR-39 Rogers-Munson Buildable Area Variance to Chapter 804
One (1) 2.55 acre parcel in Clear Creek Township, Section 2 at 3814 E Ramp Creek RD. **Zoned SR/ECO1.**
****CONTINUED BY PETITIONER TO 01/02/2019 BZA MEETING****

REPORTS:

- 1. Planning:** Larry Wilson
2. County Attorney: David Schilling

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OLD BUSINESS

1. 1805-VAR-14

Schopp Conditions for Tourist Home Variance to Chapter 802

One (1) 5.22 +/- acre parcel in Clear Creek Township, Section 21 at 9521 S Strain Ridge Rd. **Zoned AG/RR/ECO1.**

****CONTINUED BY PETITIONER TO 01/02/2019 BZA MEETING****

BOARD ACTION: Kaczmarczyk introduced the petition.

STAFF ACTION: Petition has been continued to the 1/2/2019 meeting, by the petitioner.

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NEW BUSINESS

1. 1810-VAR-35

Clark Zinnia Rear Yard Setback Variance to Chapter 804

One (1) 0.37 +/- acre parcel in Clear Creek Township, Section 16 at 1231 E Zinnia DR. **Zoned ER.**

BOARD ACTION: Kaczmarczyk introduced the petition.

STAFF ACTION:

Nester: Thanks Peter. This property is 0.37 acres. It is located in Clear Creek Township, Section 16, at 1231 East Zinnia Drive. The petitioner is located in Lakewood Hills Subdivision. You can see in Clear Creek Township their zoning is Estate Residential. Typically lots sizes in Estate Residential are 1 acre minimums. This particular area was subdivided at a time when that was not strictly enforced so most of the lots in Lakewood Hills are actually under the 1 acre minimum threshold. In the Comprehensive Plan it is Rural Residential. The site conditions here. This overall bird's eye view is a little bit old. There is established grass and everything but it is fairly flat, as you can tell from this slope map. What the petitioner is asking for is to add an inground pool in the rear of the property. As you can tell the lot line kind of northwest to southeast and that is what is working against them for their proposal for an inground pool. I have some site photos here. On the upper left looking along Zinnia Drive and then on the right kind of looking north towards the property line and then you can see the neighbor in the back as well. In the bottom photo the blue lines indicated are actually they had a surveyor stake out where the pool would go and the red lines staked out is the property line. This is just showing a view of their setback. So the required setback is 35' feet and the petitioner is requesting to encroach about 6' or 7' feet into that setback requirement. The upper left photo is showing the neighbor again kind of the closest neighbor here. The property to the east is not developed so this is just a view of the nearest person and then the photo on the right is just showing the near property line and nearby neighbors in the backyard, which would be closest to where the pool would go. The petitioner also will be putting in a fence along this property line in this area. So there will be some screening from neighbors from this view. The bottom photo is showing the existing home and then the retaining wall there so that is kind of why they have positioned the inground pool the way that they have to allow for the existing retaining wall to remain there. They would be adding some concrete decking around the pool that does not have to meet setback requirements like the actual pool structure, just so that you are aware. This is a more updated bird's eye view of the property. Here is the petitioners letter just stating that they would like to receive a variance for the Rear Yard Setback and then the site plan here showing that triangle of area where they would be encroaching into their Rear Yard Setback. Stormwater and Public Works did not have any comments on this proposal. The recommended motion from the Planning Department is to deny the Design Standards Variance for the Rear Yard Setback, based on findings of fact. I can take any questions.

RECOMMENDED MOTIONS

Deny the design standards variance to Chapter 804 for the Rear Yard Setback Standard based on the findings of fact.

FINDINGS OF FACT: Rear Yard Setback Standard

812-6 Standards for Design Standards Variance Approval: In order to approve an application for a design standards variance, the Board must find that:

(A) The approval, including any conditions or commitments deemed appropriate, will not be injurious to the public health, safety, and general welfare of the community, because:

(1) It would not impair the stability of a natural or scenic area;

Findings:

- Approval of the variance would allow the petitioner to put in a 12' x 26' in-ground swimming pool;
- Access to the property is derived from E Zinnia Drive, a Local Road;
- The property is zoned Estate Residential (ER), with a minimum rear yard setback of 35';
- The pool would be 28.1 feet from the rear property line per the petitioner's survey;
- The property is not in the FEMA floodplain or in the Environmental Constraints Overlay area;
- Conclusion: It would not impair the stability of a natural or scenic area;

(2) It would not interfere with or make more dangerous, difficult, or costly, the use, installation, or maintenance of existing or planned transportation and utility facilities;

Findings:

- See Findings under Section A(1);
- The property is on sewer;
- The petitioner meets the front and side setbacks;
- Conclusion: It would not interfere with or make more dangerous, difficult, or costly, the use, installation, or maintenance of existing or planned transportation and utility facilities;

(3) The character of the property included in the variance would not be altered in a manner that substantially departs from the characteristics sought to be achieved and maintained within the relevant zoning district. That is, the approval, singularly or in concert with other approvals - sought or granted, would not result in a development profile (height, bulk, density, and area) associated with a more intense zoning district and, thus, effectively re-zone the property; and,

Findings:

- See Findings under Section A(1 & 2);
- The petition site is zoned Estate Residential (ER). The required rear setback for this property is 35';
- At the time the property was subdivided it was zoned RE1, which requires a 50' rear yard setback per Chapter 833;
- The plat lists a rear setback of 25';
- The existing development meets all setbacks;
- The proposed pool could be oriented and altered to meet the required setbacks;
- There has been one other rear setback variance sought after in this subdivision in 2008

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that was approved;

- Conclusion: The character of the property included in the variance **would** be altered in a manner that substantially departs from the characteristics sought to be achieved and maintained within the relevant zoning district;

(4) It would adequately address any other significant public health, safety, and welfare concerns raised during the hearing on the requested variance;

Findings:

- The Board of Zoning Appeals may request the petitioner to address any other significant public health, safety, and welfare concerns raised during the hearing;

(B) The approval, including any conditions or commitments deemed appropriate, would not affect the use and value of the area adjacent to the property included in the variance in a substantially adverse manner, because:

(1) The specific purposes of the design standard sought to be varied would be satisfied;

Findings:

- See Findings under Section A(1 & 3);
- Conclusion: The specific purposes of the design standard sought to be varied would be satisfied;

(2) It would not promote conditions (on-site or off-site) detrimental to the use and enjoyment of other properties in the area (e.g., the ponding of water, the interference with a sewage disposal system, easement, storm water facility, or natural watercourse, etc.); and,

Findings:

- See Findings under Section A(2);
- The petitioner will not be placing the pool in the drainage easement;
- The petitioner did receive a variance from the Monroe County Drainage Board to place a fence in the drainage easement;
- Conclusion: It would not promote conditions detrimental to the use and enjoyment of other properties in the area;

(3) It would adequately address any other significant property use and value concerns raised during the hearing on the requested variance; and,

Findings:

- The Board of Zoning Appeals may request the petitioner to address any other significant property use and value concerns raised during the hearing on the requested variance;

(C) The approval, including any conditions or commitments deemed appropriate, is the minimum variance necessary to eliminate practical difficulties in the use of the

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property, which would otherwise result from a strict application of the terms of the Zoning Ordinance.

Findings:

- See Findings under Section A(1);
- The petitioner could position the pool in a way that does not interfere with the rear setback;
- Conclusion: Practical difficulties **have not** been established;

All variance approvals shall be considered to be conditional approvals. The Board shall have the authority to impose specific conditions as part of its approval in order to protect the public health, and for reasons of safety, comfort and convenience (e.g., to insure compatibility with surroundings). Variance approval applies to the subject property and may be transferred with ownership of the subject property subject to the provisions and conditions prescribed by or made pursuant to the Zoning Ordinance.

NOTE: The Board must establish favorable findings for ALL THREE criteria in order to legally approve a design standards variance.

QUESTIONS FOR STAFF –1810-VAR-35 – Clark Zinnia

McNeil: Can you direct me to which of the findings caused you to have a recommended denial?

Nester: Yes, it was the last finding of hardship. They potentially could orient the pool or change up the sizing of the pool to allow for them to still meet that 35' foot Rear Setback.

McNeil: Where is that in the findings?

Nester: Larry, do you have the full packet? Under....

Kaczmarczyk: Page 30.

Nester: That is the beginning of the packet, yeah.

McNeil: Page 30.

Kaczmarczyk: Page 30 is the section on Practical Difficulties.

Nester: Page 30, yes. Thank you.

McNeil: Thank you.

Kaczmarczyk: I did want to clarify, I know in the packet it said that you thought the pool could be reoriented and it said that might result in the need to remove trees. You didn't say anything about the retaining wall that you mentioned just now. Would reorienting the pool in the way that is was suggested in the packet have any effect on the retaining wall?

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Nester: You can kind of see the retaining wall in this overall photo, just showing a little bit. The discussion that I had with the petitioner when he came in after the packet went out was we discussed moving it a little bit further west. But then he had brought up the fact that there were trees that would need to be taken down. So I think just orienting it just a little bit further west but of course, we are also stuck in a hard place. Because our ordinance doesn't expressly give value or anything to trees for taking those down in this case. But we would also like to see the trees preserved.

Kaczmarczyk: Understood. Thank you. Any other questions? Alright, in that case would the petitioner or the petitioner's representative like to address the Board? If so, please come on up to the podium.

PETITIONER/PETITIONER'S REPRESENTATIVE – 1810-VAR-35 – Clark Zinnia

Kaczmarczyk: I do need to swear you in first. Could you raise your right hand and state your name?

Clark: David Clark.

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

Clark: I do.

Kaczmarczyk: Alright, thank you. Mr. Clark. Please go right ahead.

Clark: As you can see when we purchased the property we were also going to eventually put in a pool and this is what we have there. The way our property line is designed there it's obviously cutting us off, but we are looking at just the corner of the pool. The other problem that we have to rearrange it besides the trees is that we have a screened in porch that is you twist it in a different way...trees back here and then angle, you know, as far as the looks of it from our...

Kaczmarczyk: If you can try to stay by the microphone when you are up there, thank you.

Clark: As far as the looks of it in our screened in porch that it would take up a lot of valuable space in our back yard. We are kind of crammed with space the way that it is. Our original plat showed that it was a 25' foot rear setback which wouldn't interfere with what we have now presently. But since it's been changed to a 35' foot, it does interfere 6' or 7' feet from it. But originally there was a 25' foot setback, rear setback originally. We are putting a fence in the upper right photo there were the 2 red stakes are. There will be a fence from that cedar tree on the left there and there is another cedar tree that you can't see in that picture that would come across there that would take care of our neighbors that are directly north of us. The cedar trees do provide some privacy but we wanted a little bit more privacy with a vinyl fence which we have a contractor who is going to come out and put that in, which would obviously offer some buffer to our neighbors there a little bit. The other setbacks are meant for lots that are, again as she mentioned over 1 acre in size and ours is not that size of acre. Again, she also mentioned about cutting down trees which we really, you can't see the trees that we planted over here on this side, which wouldn't affect the pool at all. But we would like to keep the trees as much as we can.

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Kaczmarczyk: Ok. Alright, I do have a question for you about the trees. I am not a big fan of cutting the trees either. The trees in question if you were to reorient that pool, it looked like it had to be twisted and moved over a little to the west, would that put the pool where it would physically be in the same space of the trees, as in you would have no choice but to cut them or it would just be putting it much closer to the trees where and I pass no judgment on this....

Clark: We would be putting it closer to the trees with the effect of the sun from the west would, you know, take about half our pool probably wouldn't take very long in the middle of the summer that our pool would be in the shade and that is what we are really trying, we have pushed it as far west as we could to compensate for meeting the 35' foot from the north boundary as much as we could. But it is still that little square at that end of the pool that doesn't meet that. So, that is the quandary and if you, I don't know what you meant by twisting it.

Kaczmarczyk: I was trying....

Clark: Instead of just moving it down if you twist it then it's going to kind of, you know, you are running into the our wall there.

Kaczmarczyk: Yeah, I admit it was a little hard to tell exactly how it would be moved to fit in there. Ok, well that clarifies the tree issue for me. Thank you. Any other questions for Mr. Clark? Alright, well thank you very much.

Clark: Thank you.

Kaczmarczyk: Is there anyone else here tonight who wishes to speak in support of the petition? Seeing none. Is there anyone here who wishes to speak in opposition to the petition? Seeing none.

SUPPORTERS –1810-VAR-35 – Clark Zinnia: None

FURTHER SUPPORTERS –1810-VAR-35 – Clark Zinnia: None

REMONSTRATORS –1810-VAR-35 – Clark Zinnia: None

ADDITIONAL QUESTIONS FOR STAFF –1810-VAR-35 – Clark Zinnia

Kaczmarczyk: I do have a question for staff. The packet mentioned the 25' foot and 35' foot setbacks, I was wondering if you could explain to me a little bit how did it change or was there a misinterpretation? How did we get those two figures?

Nester: This plat when it was recorded in 1996 had RE1 zoning, so now it is Estate Residential zoning. So how we have treated plats that have been recorded under a different zoning is that we go with what the current zoning setbacks are. It is true that the most recent recorded plat for Mr. Clark does say 25' foot rear setback under RE1 zoning which is no longer the zoning. Now the Estate Residential zone says the rear yard setback is 35' feet, so it is confusing and it is something that we are going to have to deal with a lot more with our CDO coming up. But Larry, if you want to weigh in as well we have had a lot of plats come in that we have been struggling with. Do we

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go with the plats setbacks or do we go with the zoning setbacks? In this case because the zoning is listed incorrectly on the original plat and it is from 1996 we go with today's zoning ordinance.

Kaczmarczyk: When was it...?

Wilson: Where this comes up are plats that for whatever reason did not comply with the zoning ordinance at the time they were platted. I don't have an explanation for that other than they used to allow plats to be platted that didn't meet the zoning standards. So it creates a conflict. We are hoping to address it more clearly in the new ordinance, trying to setup rules. We also ran into the same situation with restrictive covenants as well. So there is a conflict there because, you know, you have one thing that is on the plat and you have one thing that is on the zoning ordinance. I don't think that the circumstance where the recorded plat has a lesser standard than the zoning ordinance is maybe a basis for granting the variance as far as practical difficulties. But the problem these lots didn't meet the minimum lot size requirement for the zone, so that is just another problem. For whatever reason they were allowed to go in as basically substandard lots at the time they were platted. The other question is we never know whether a neighbor is going to say I hate this, I don't want it any closer to my lot line and that is one of the reasons we usually, well, we don't really have a choice, but that is one of the justifications for having a variance required. It at least allows the neighbors to step in and say, well, I want the zoning ordinance to apply in this situation.

Kaczmarczyk: Ok. I was still a little unclear. Was this property rezoned at some point after it was originally platted and developed or?

Wilson: It was platted under the old ordinance but it did not meet the ordinance, so when the new ordinance went in, I think if it had met the requirements of the original zoning ordinance, would it be ok now? We don't know now.

Nester: I think yeah, so RE1 still would have had the 1 acre minimum requirement. But yes. I tried to look back to see more history on this subdivision but it was unclear.

Wilson: The farther we get back the less documentation we have as to what occurred and what the intent was. Again, we are going to try to come up with a standard rule and procedure for dealing with this. But as of right now we are basically more obligated to apply the zoning ordinance because there is a rule that says the zoning does not apply to existing plats or the plat controls over the existing zoning.

Kaczmarczyk: Ok. I think that makes it clearer for me. Any other questions for staff? Go right ahead.

Kruzan: It's a technical thing I think is I just want to make sure on the agenda, while unimportant I guess in the long run, that we have got the page numbers applied to the wrong cases. This is listed as page 4 and 19 and we have the church case. I think they are inverted, right?

Nester: Yes, sorry, because the church case was withdrawn it messed up the pages. Thank you.

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Kruzan: The question I had was you mentioned neighbors, so just so I understand, public notice is all adjoining properties?

Nester: Yes.

Wilson: We basically give notice 2 properties deep surrounding a parcel and then we post a sign at the street front of the parcel as well as posting a notice in the paper that would allow someone to find out it is going on.

Kruzan: Ok and no response.

Nester: No, I didn't receive any.

Kruzan: Thank you.

Wilson: But we don't know until the meeting whether there is going to be a response. That is the problem.

Kruzan: Right, I know that.

Kaczmarczyk: Any other questions for staff? Alright, I have none, so I will entertain a motion or further discussion.

FURTHER QUESTIONS FOR STAFF - 1810-VAR-35 – Clark Zinnia

McNeil: I have a motion. **In case number 1810-VAR-35, Design Standards Variance Rear Yard Setback, I move that we approve the variance based upon the findings of fact, as amended to strike the word “not” from the sentence regarding particular difficulties.**

Kruzan: **Second.**

Kaczmarczyk: It has been moved and second. Larry, if you could call the roll, please.

Wilson: The vote is on petition 1810-VAR-35, Clark Zinna Rear Yard, I am not sure exactly where that title came from, but rear yard setback variance. A vote in favor is a vote to approve the variance based upon the amended finding. Margaret Clements?

Clements: In favor.

Wilson: Peter Kaczmarczyk?

Kaczmarczyk: Yes.

Wilson: Michael McNeil?

McNeil: Yes.

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Wilson: Mark Kruzan?

Kruzan: Yes.

Wilson: The variance is granted 4 to 0.

The motion in case 1810-VAR-35, Clark Zinnia Rear Yard Setback Variance to Chapter 804, in favor of approving the variance with the amended findings, carried unanimously (4-0).

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NEW BUSINESS

2. 1810-VAR-36 City Church of All Nations Sign Allocation Variance to Chapter 807
One (1) 10.07 +/- acre parcel in Bloomington Township, Section 36 at
1200 N Russell Rd. **Zoned RE2.5/ECO3.**
****WITHDRAWN BY PETITIONER****

BOARD ACTION: Kaczmarczyk introduced the petition.

STAFF ACTION: Petition was withdrawn by the petitioner.

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NEW BUSINESS

- 3. 1810-VAR-37 Oliver Wine Company LLC Height Variance to Chapter 804**
One (1) 12.75 acre parcel in Washington Township, Section 21 at 150 E
Winery RD. **Zoned AG/RR.**

BOARD ACTION: Kaczmarczyk introduced the petition.

STAFF ACTION:

Behrman: This is also the last case of the evening. Alright, so we are looking at the property just south of the main Oliver Winery Tasting Room that they purchased a few years ago. It is located now off of East Winery Road, which is located off of that new North Wayport access road and about a mile north of the nearest I-69 exit. This particular lot is zoned Agricultural/Rural Reserve, which does permit the use of Winery. The Comprehensive Plan has it as Rural Residential. The site conditions, this is old. We have had Phase 1 implemented on this site. There is an approved site plan and they have put in Phase 1 which is a warehouse and also bio retention, landscaping and parking improvements for the site. The area that they are developing is quite flat though the Phase 2 that we are here for did come before the BZA a couple years ago a Slope Variance. We had just established the 2015 Buildable Area Standards and their proposed production facility already had gotten that Slope Variance back then. These are a few site photos, the entry way to the driveway off East Winery Road, the bottom picture you are seeing the warehouse on the right hand site that has already been built and it is approximately, I believe 27' feet tall. On the left side where all of the orange cones are that is where they are staging construction of the foundation for Phase 2. When we reviewed the site plan, we reviewed most of it from a bird's eye view and then when the Building Permit application came in and showed that the structure was going to be 42' feet high as a statement on the application. Then when we reviewed the construction plans and looked at the plans themselves we noticed that the structure was going to be 48' feet tall. Our allowed zoning in the Agricultural/Rural Reserve zoning allows 40' feet as the maximum height for a primary structure. So they are here asking for that 8 foot height increase for this zoning. These are 2 other photos of the site and one thing I am going to point out here is that the trees in the background are native hardwood forest and usually the height for those species comprised between 65' feet and 100' feet on average. They can get taller. But I thought that was something important to note because where this Phase 2 Production Facility is going does have a lot of woods and forest surrounding it and buffering it from neighbors. This is an aerial view and this is actually a little more recent where you can see the Phase 1 structure and their parking area. I call it a parking area but it is really more like a truck turnaround for the semi's that come in to load and unload. Other things that I am going to note while we are here are the wooded areas. You have definitely got Classified Forest, about 15 acres of Classified Forest for this site to the west and to the north and they have installed quite a bit of buffer yard to the south to buffer that residential neighborhood. The neighbor to the south that you can see in this photo, he did supply and it is in this packet a letter of support for this height variance. He did not have an issue with it. This is the engineering letter that kind of talks about the tanks that are going to be within this production facility and how you do have to have a 12 foot overhead to allow for staff to go along a catwalk in there to check and monitor the tanks during fermentation and cleanout. We have got on this page Oliver Winery's Letter of Intent for the Height Variance and that is the letter of support from the neighbor on the right hand side. These are some drawings that I took from the plans. The upper one was just on the cover page but it shows the height of the warehouse, which is already established and that we saw

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in the picture and gives it a nice scale of how the production facility is going to be. The bottom picture shows those tanks within and the catwalk that goes across there for inspection purposes and cleanout and maintenance purposes. I also included the average tree height table in there showing why this structure even though it is going to be 48' feet tall is really not going to be noticeable unless you are on the property itself. This is the overall site for Oliver Winery, kind of like Winery Campus that they have there, with the tasting room and all of the other accessory buildings that they have plus the office, plus I highlighted Phase 2 in blue. That is the new one that is going in and it is right next to some Classified Forest areas. We had no comment from Stormwater or Public Works for this petition and the recommended motion is approval for the Design Standards Variance for Height Standards in Chapter 804, based on the findings of fact. Any questions?

RECOMMENDED MOTIONS:

Approve the design standards variance to Chapter 804 based on the findings of fact.

FINDINGS OF FACT: 1810-VAR-37 Height Design Standard

812-6 Standards for Design Standards Variance Approval: In order to approve an application for a design standards variance, the Board must find that:

(A) The approval, including any conditions or commitments deemed appropriate, will not be injurious to the public health, safety, and general welfare of the community, because:

(1) It would not impair the stability of a natural or scenic area;

Findings:

- The petition is to allow a 48' tall wine production facility in a zone that allows for only 40' tall structures;
- Oliver Wine Company has 13.02 acres in the DNR Classified Forest program located to the north and east of the production facility (Exhibit 5);
- Oliver Winery is a tourist destination but it is not necessarily considered a natural or scenic area;
- I-69 is located to the west nearby to the Oliver Winery Site;
- The 48' height of the structure will be difficult to see from neighboring properties due to the surrounding tree cover;
- The native trees in the surrounding forests will reach heights on average between 50' to 100' (Exhibit 6);
- Conclusion: It would not impair the stability of a natural or scenic area;

(2) It would not interfere with or make more dangerous, difficult, or costly, the use, installation, or maintenance of existing or planned transportation and utility facilities;

Findings:

- See Findings under Section A(1);
- The site gains access via E Winery RD (a designated local road) that currently connects into the access road N Wayport RD;

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- The nearest access point to the I-69 interstate is one mile south at the Sample Road interchange;
- All other design criteria were met and reviewed during the site plan review process from Chapter 815;
- A retaining wall 11-12 ft in height was constructed in the area of steep slopes prior to constructions of Phase 1 warehouse and Phase 2 foundation;
- Engineered site plans were submitted addressing traffic flow, utility and sewer needs and approved by the staff and the City of Bloomington Utilities;
- A Land Use Certificate demonstrating compliance to Planning and Zoning standards was issued for the parking, landscaping, bioretention, and Phase 1 building;
- Conclusion: It would not interfere with or make more dangerous, difficult, or costly, the use, installation, or maintenance of existing or planned transportation and utility facilities;

(3) The character of the property included in the variance would not be altered in a manner that substantially departs from the characteristics sought to be achieved and maintained within the relevant zoning district. That is, the approval, singularly or in concert with other approvals - sought or granted, would not result in a development profile (height, bulk, density, and area) associated with a more intense zoning district and, thus, effectively re-zone the property; and,

Findings:

- See Findings under Section A(1);
- Winery use is permitted in AG/RR;
- The pre-existing business adjacent to the property is a winery;
- The proposed agriculture buildings would meet density, bulk, setback and area standards for the AG/RR zone;
- The production facility exceeds all setback requirements and it will not be shading out any neighboring properties;
- The petitioner combined several of their lots for planning and zoning purposes to maximize the buildable area and eliminate setback requirements between lot lines;
- Agriculture structures are exempt from maximum lot coverage standards;
- This location is not in a dense residential area or adjacent to the airport where height issues can be more of a concern;
- Conclusion: The character of the property included in the variance would not be altered in a manner that substantially departs from the characteristics sought to be achieved and maintained within the relevant zoning district;

(4) It would adequately address any other significant public health, safety, and welfare concerns raised during the hearing on the requested variance;

Findings:

- The Board of Zoning Appeals may request the petitioner to address any other significant public health, safety, and welfare concerns raised during the hearing;

(B) The approval, including any conditions or commitments deemed appropriate, would

not affect the use and value of the area adjacent to the property included in the variance in a substantially adverse manner, because:

(1) The specific purposes of the design standard sought to be varied would be satisfied;

Findings:

- See Findings under Section A(1) and Section A(3);
- The variance from slope requirements can only apply to the extent of the proposed site plan submitted thus minimizing the amount of land disturbance;
- Conclusion: The specific purposes of the design standard sought to be varied would be satisfied;

(2) It would not promote conditions (on-site or off-site) detrimental to the use and enjoyment of other properties in the area (e.g., the ponding of water, the interference with a sewage disposal system, easement, storm water facility, or natural watercourse, etc.); and,

Findings:

- See Findings under Section A(1&2) and B(1);
- Water drains to the north and south of the lot and ends up in a nearby pond partially owned by the petitioner;
- Impervious surface runoff is captured in bioretention that meets Chapter 830 standards and was reviewed and inspected by the drainage engineer during the site plan review process and final inspection of the installation;
- Conclusion: It would not promote conditions detrimental to the use and enjoyment of other properties in the area

(3) It would adequately address any other significant property use and value concerns raised during the hearing on the requested variance; and,

Findings:

- The Board of Zoning Appeals may request the petitioner to address any other significant property use and value concerns raised during the hearing on the requested variance;

(C) The approval, including any conditions or commitments deemed appropriate, is the minimum variance necessary to eliminate practical difficulties in the use of the property, which would otherwise result from a strict application of the terms of the Zoning Ordinance.

Findings:

- The petitioner has applied for this variance which is the minimum variances necessary to eliminate practical difficulties in the use of the property as designed.
- Practical difficulties have been demonstrated in that redesign of the proposed structure at this time would reduce the ability for accommodated the 47 production tanks from being properly inspected and maintained by personal from the required catwalk system (Exhibit

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3 & 4).

All variance approvals shall be considered to be conditional approvals. The Board shall have the authority to impose specific conditions as part of its approval in order to protect the public health, and for reasons of safety, comfort and convenience (e.g., to insure compatibility with surroundings). Variance approval applies to the subject property and may be transferred with ownership of the subject property subject to the provisions and conditions prescribed by or made pursuant to the Zoning Ordinance.

NOTE: The Board must establish favorable findings for ALL THREE criteria in order to legally approve a design standards variance.

QUESTIONS FOR STAFF –1810-VAR-37 – Oliver Wine Company

Kaczmarczyk: Thank you. Any questions? Alright, none from me either. Would the petitioner or the petitioner's representative like address the Board this evening? Come on up and sign in.

**PETITIONER/PETITIONER'S REPRESENTATIVE –
1810-VAR-37 – Oliver Wine Company**

Kaczmarczyk: State your name please.

Adams: Julie Adams, President of Oliver Winery.

Kaczmarczyk: Miss Adams, do you swear or affirm to tell the truth and nothing but the truth?

Adams: I do.

Kaczmarczyk: Alright, thank you. Please proceed.

Adams: We don't have a lot to add to this. Thank you very much for hearing our request and thank you Tammy for helping us get everything together to come here tonight. We are in a position right now where we are fortunate to be growing and we see a couple hundred thousand visitors a year in the tasting room and we distribute in 26 states. This is going to be a building that if we get to move forward with it will support that growth. In the building design process we work with process engineers, architects, engineers, the builder and our wine making team to determine the size of the tanks and the layout of the building and everything. The tank size is determined by the needs of operation as well as the tanks that we currently have and in this case, since we are putting up a larger building the structure to support the roof is more significant than in the buildings that we currently have and thus we need a little bit more height there. As Tammy said we have positive relationships with the neighbors. We work in the hospitality business and really pride ourselves on having good relationships and in this case we will certainly continue to be a good member of the community and provider of Monroe County of jobs and other positive experiences. We have got here tonight our Facilities Manager, Tim Lamb, Bill Oliver, Bill Riggert is a Civil Engineer and a member of building team Nelson Smiley from Patterson Worth, and so if you have technical questions, they are probably the folks to answer them. But I just ask for your support in this

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process.

Kaczmarczyk: Thank you Miss Adams. Does anyone have any questions for her? Alright, thank you very much.

Adams: Thank you.

Kaczmarczyk: Anyone else here in support of this petition who would like to speak this evening? I am sure if any of these folks have questions for you, they will let you know. Anyone here tonight who would like to speak in opposition to this petition? Seeing none. I will entertain a motion of more discussion. Yes?

SUPPORTERS –1810-VAR-37 – Oliver Wine Company: None

FURTHER SUPPORTERS –1810-VAR-37 – Oliver Wine Company: None

REMONSTRATORS –1810-VAR-37 – Oliver Wine Company: None

ADDITIONAL QUESTIONS FOR STAFF –1810-VAR-37 – Oliver Wine Company: None

FURTHER QUESTIONS FOR STAFF - 1810-VAR-37 – Oliver Wine Company

Kruzan: I just want to say in the interest full disclosure, I have had a successful past working relationship in 2 past lives with Oliver Winery. Those past lives are long gone and in this life I don't. I am still a purchaser of the product though I am not under the influence of it as I vote this evening.

Kaczmarczyk: I will admit I was kind of wishing you had maybe brought a sample but probably best you didn't. Any other comments, questions, concerns? If not, I will entertain a motion.

McNeil: In case number 1810-VAR-37, Design Standards Variance Chapter 804 Height Regulations, I move that we approve the variance based upon the findings of fact.

Clements: I second that.

Kaczmarczyk: We have a motion and a second. Larry, can you call the roll, please?

Wilson: The vote is on petition 1810-VAR-37, Oliver Wine Company Height Variance in an Agricultural/Rural Reserve zone. A motion in favor is a vote to approve the variance based upon the findings. Peter Kaczmarczyk?

Kaczmarczyk: Yes.

Wilson: Michael McNeil?

McNeil: Yes.

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Wilson: Mark Kruzan?

Kruzan: Yes.

Wilson: Margaret Clements?

Clements: Yes.

Wilson: The variance is granted 4 to 0.

The motion in case 1810-VAR-37, Oliver Wine Company LLC Height Variance to Chapter 804, in favor of approving the variance with the conditions and commitment attached to the motion, carried unanimously (4-0)

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NEW BUSINESS

4. 1811-VAR-38 Rogers-Munson ECO Area 1 Variance to Chapter 825

5. 1811-VAR-39 Rogers-Munson Buildable Area Variance to Chapter 804

One (1) 2.55 acre parcel in Clear Creek Township, Section 2 at 3814 E
Ramp Creek RD. **Zoned SR/ECO1.**

****CONTINUED BY PETITIONER TO 01/02/2019 BZA MEETING****

BOARD ACTION: Kaczmarczyk introduced the petition.

STAFF ACTION: Petition has been continued to the 1/2/2019 meeting, by the petitioner.

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REPORTS:

Planning/Wilson: Just a reminder that we are changing the starting time for the Board of Zoning Appeals to 5:30, beginning next month in January. I would like to thank the Board for your service during 2018. I will let you know that we discuss a lot of what your opinions are in these cases, particularly in preparation of a new zoning ordinance or amendments. Your comments, you disgusted is very useful for us as far as evaluating the zoning and how it is being applied and how we can change it to make it more predictable and fairer in the future. So, keep doing that.

Kaczmarczyk: That is good to hear. It is nice to know that we are being listened to. I do want to take this opportunity to let everybody know that I will not be here for the January meeting. I wish you all good luck with that.

Kruzan: Do we have a date? Larry, do we have a date set?

Wilson: I believe it's the first Wednesday, so it would be the day after New Year's Day.

Kruzan: Thank you for what you said and thank you to staff.

Clements: That was really great presentations. You really give us a lot of good valuable information and perspective and it really helps in us helping the community, so thank you.

Legal/Schilling: No report

The meeting adjourned at 6:34 P.M.

Sign:

Attest:

Peter Kaczmarczyk, Chairman

Larry J. Wilson, Secretary

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