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**BOARD OF ZONING APPEALS
Regular Meeting Minutes
September 4, 2019 - 5:30 p.m.**

CALL TO ORDER

ROLL CALL

INTRODUCTION OF EVIDENCE

APPROVAL OF AGENDA

APPROVAL OF MINUTES

August 7, 2019

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

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

ABSENT: *Michael McNeil, Mark Kruzan*

STAFF PRESENT: Larry Wilson, Director, Tammy Behrman, Senior Planner, Anne Crecelius, Planner/GIS Specialist, Drew Myers, Planner/GIS Specialist

OTHERS PRESENT: David Schilling, Legal, Lisa Ridge, Highway Department Director, Paul Satterly, Highway Engineer

INTRODUCTION OF EVIDENCE:

Larry Wilson introduced the following items into evidence:

Monroe County Comprehensive Land Use Plan (as adopted and amended)
Monroe County Zoning Ordinance (as adopted and amended)
Monroe County Subdivision Control Ordinance (as adopted and amended)
Board of Zoning Appeals Rules of Procedure (as adopted and amended)
Cases advertised and scheduled for hearing on tonight's agenda

The motion to approve the introduction of evidence carried unanimously.

APPROVAL OF AGENDA:

Motion to approve the agenda, as amended, carried unanimously

APPROVAL OF MINUTES:

Motion to approve minutes of August 7, 2019 carried unanimously.

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OLD BUSINESS: NONE

NEW BUSINESS:

- 1. 1904-VAR-22** **Beargie Front Yard Setback Variance to Chapter 804**
- 2. 1904-VAR-23** **Beargie Minimum Lot Size Variance to Chapter 804**
One (1) 0.67 +/- acre parcel in Washington Township, Section 16 at 505 E Chambers Pike. **Zoned AG/RR.**
- 3. 1907-VAR-39** **Cummins Buildable Area Variance to Chapter 804**
One (1) 0.3 +/- acre parcel in Benton North Township, Section 34 at 7673 N Tunnel RD. **Zoned SR.**
*****CONTINUED BY PETITIONER*****
- 4. 1907-VAR-41** **Gilpin Buildable Area Variance to Chapter 804**
One (1) 2.89 +/- acre parcel in Clear Creek Township, Section 6 at 2256 S Sunday DR. **Zoned AG/RR.**
- 5. 1908-VAR-42** **McCullough Minimum Lot Size Variance to Chapter 804**
- 6. 1908-VAR-43** **McCullough Minimum Lot Width Variance to Chapter 804**
One (1) 1.0 +/- acre parcel in Clear Creek Township, Section 9 at 7736 S Zikes RD. **Zoned AG/RR.**
- 7. 1908-VAR-44** **Goris and Klitzing Buildable Area Variance to Chapter 804**
One (1) 0.19 acre parcel in Benton North Township, Section 34 at 7675 N Tunnel RD. **Zoned SR.**
- 8. 1908-VAR-45** **Cornwell and Patzner Front Setback Variance to Chapter 804**
- 9. 1908-VAR-46** **Cornwell and Patzner Parking Setback Variance to Chapter 806**
One (1) 1.0+/- acre parcel in Perry Township, Section 28 at 5450 S Old State Road 37. **Zoned PB.**
- 10. 1908-VAR-47** **Short Minimum Lot Size Variance to Chapter 804**
One (1) 0.679 +/- acre parcel in Clear Creek Township, Section 16 at 1285 E Zinnia DR. **Zoned ER.**

REPORTS:

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

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NEW BUSINESS

1. 1904-VAR-22 Beargie Front Yard Setback Variance to Chapter 804

2. 1904-VAR-23 Beargie Minimum Lot Size Variance to Chapter 804

One (1) 0.67 +/- acre parcel in Washington Township, Section 16 at 505 E Chambers Pike. **Zoned AG/RR.**

BOARD ACTION: Kaczmarczyk introduced the petition.

STAFF ACTION:

Crecelius: Good evening, everyone. The petitioner is requesting 2 design standards variances, both from Chapter 804. The first from the Front Yard Setback and second from the Minimum Lot Size Standard. The property is located in Washington Township. It is addressed off of 505 East Chambers Pike. It is 0.67 in Section 16. Its current zoning is Agricultural/Rural Reserve. The adjacent properties are also Agricultural/Rural Reserve with a small section of Pre-existing Business to the south. The site conditions are fairly flat. There is an overhead utility that runs along the western edge of the property pretty much parallel with the petitioner's home. The site is flat with a little bit of slope on the west side of the home. As you can see there is a built in basement to the hill. I apologize I forgot to include the parcel sized map that is included in your packet. That map demonstrates other properties in the area that are also under the minimum lot size for the Agricultural/Rural Reserve zone. Really the map illustrates that the majority of the surrounding parcels that are under 2.5 acres are mainly used as right-of-way for I-69. In the Comprehensive Plan the property is identified as Rural Residential. Moving onto some of the site photos that were taken in early May. The top photo shows the setback from Chambers Pike. It has a 35' foot right-of-way and a 35' foot setback. We can see that the current home is 3.4' feet from the right-of-way. The variances were requested they came about through a request for Building Permits. The petitioner is requesting to build a room addition on the upper left portion of the home, the upper left photo. It is on the north side of the home. That addition would add approximately 460' square feet. The house is currently 1,500' square feet. The bottom right photo shows that walkout basement and that little bit of slope on the property. The second requested Building Permit was an addition of an elevated, uncovered deck. It would come off of the main story and overhang kind of that patio area that we can see in that bottom right photo. The upper left shows again just the narrowness of the front yard. As stated previously the minimum lot size for Agricultural/Rural Reserve is 2.5 acres. The parcel is 0.67 acres. In 2014 the right-of-way acquisition for I-69 construction acquired 0.07 acres of the property in front of the existing home. That is a bit of that that is the bump out that we see next to the road on the north side of the property. That is what that right-of-way is. The proposed deck over the patio would be approximately 125' square feet. Both of these structures would require front setback if the variances were approved. The majority of the house is within the setback. Variance approval for only the Minimum Lot Size would allow further development but it would require the petitioner to meet all of the other design standards. Approval of both requests would allow the petitioner to construct that addition and the elevated uncovered deck. These variances are the minimum variances needed to complete these 2 proposed developments. Prior to the I-69 acquisition the home met the front setback requirements. Prior to the Chambers Pike Bridge the road was listed as a local road according to the Thoroughfare Plan and only required a 25' foot setback. The property is further constrained by the local of the driveway, the septic system and the overhead powerline. You can see the powerline, it is reflecting light. You can see it in the top left photo. The powerline is not located within an easement per the

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survey completed by the petitioner but staff is hesitant to issue a Building Permit or an Improvement Location Permit for building a structure underneath that powerline. That would be the uncovered elevated deck. We have the petitioner's letter on the upper left. The survey is from a snippet of the official survey that they completed. That yellow demonstrates the 35' foot setback that is required and as you can see the majority of the home is located within it. Staff recommends denial of the request for the variance from the Front Yard Setback Standard. Staff recommends approval to the Design Standards Variance for Minimum Lot Size. Does anybody have any questions?

RECOMMENDED MOTION:

Approve the Design Standards Variance to the Minimum Lot Size standard in Chapter 804 of the Monroe County Zoning Ordinance based on the findings of fact.

Deny the Design Standards Variance to the Front Yard Setback standard in Chapter 804 of the Monroe County Zoning Ordinance based on the findings of fact, specifically Finding A(2) and C.

FINDINGS OF FACT: Minimum Lot Size 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 minimum lot size variance would allow the petitioner to do further development on the lot;
- The parcel has a 1496 sf home and one 72 sf accessory structure;
- The petition site is zoned Agricultural/Rural Reserve (AG/RR) and requires a minimum lot size of 2.5 acres;
- The petition site is 0.67 acres per the property survey;
- Lot size was reduced by INDOT as part of the I69 acquisition;
- Prior to I69 acquisition, the property was 0.923 acres;
- The parcel is not platted;
- There is no evidence that the building site is located on sensitive lands;
- There is no known karst on the property;
- There is no evidence that the building would obstruct a natural or scenic view;
- 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 A (1);
- Approval of the variance allows for the petitioner to do further development. In order to

do the development as proposed – which includes adding a 336 sf (16' x 21') addition to the north side of their home and a 125 sf elevated, uncovered deck – the petitioner also requires a front setback variance;

- The parcel is addressed off of E Chambers Pike, a Major Collector Road (70' Right-of-way);
- The septic system is located southeast of the home, which would not interfere with the proposed location of the proposed development;
- An overhead utility line runs north to south over the property just west of the house. The proposed development will not interfere with the overhead utility line;
- 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 A(1) and A(2);
- The lot size presently is 0.67 acres, which is 1.83 acres below the minimum lot size for the AG/RR zoning district;
- Surrounding parcels under 2.5 acres are primarily used as right-of-way for I69;
- The I69 acquisition made the lot more nonconforming by further reducing the lot size;
- The home on this lot has existed since 1981;
- Approval of the minimum lot size variance would not increase density as there is already an existing home on the lot;
- 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:

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- See findings under A (1);
- Nearby uses are primarily residential;
- Property value tends to be subjective as it is difficult to anticipate adverse effects;
- 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 A (1);
- There is not floodplain on site;
- The site is not located within an Environmental Constraints Overlay Area.
- Conclusion: It would not promote conditions (on-site or off-site) 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:

- See findings under (A)(1);
- The home (circa 1981) met the front setback before the R/W acquisition but did not meet the minimum lot size;
- Any further development on the lot requires only a minimum lot size variance;
- The strict application of the ordinance would not allow the petitioner to further develop their lot;

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.

FINDINGS OF FACT: Front 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 build an 16' x 21' 336 sf addition that encroaches approximately 25.3' into the front yard setback;
- Any addition to the home would require a front setback variance for the existing 31.6' encroachment (deck);
- The home is currently 3.4' from the front property line per the petitioner's survey;
- The required front setback is 35' from right-of-way;
- The site has a ~1496 sf home and one accessory structure with ~ 72 sf;
- Prior to I69 acquisition, the property met the front setback requirement;
- Prior to I69 construction, the frontage road to this property was a local road and only required a 25 foot front setback;
- Once I69 construction was complete, it changed the thoroughfare plan to a Major Collector and therefore changed the front setback to 35 feet;
- The proposed 336 sf home addition would be 9.7' from the front property line. The proposed 125 sf elevated, uncovered deck located on the west side of the home would also require a front setback variance since it would be 30.7' from the front property line;
- Lot size was reduced by INDOT during the I69 acquisition and the road thoroughfare changed the front setback from 25 feet to 35 feet;
- The property fronts E Chambers Pike (Major Collector 70' ROW) which is a frontage road that provide access to I69;
- There are no designated scenic areas nearby;
- Conclusion: Approval of the variance 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 A(1);
- The parcel is located off of the Chambers Pike bridge, which does not interfere with the proposed location of the home addition;
- The petitioner will be 9.7' from the front property line;
- Lot size was reduced by 0.077 acres as part of the INDOT I69 acquisition (see exhibit 3);
- The required front setback is 35' from right-of-way;
- The site uses a septic system that is located on the southeast side of the house;
- One purpose for front setback requirements is to maintain a safe distance from roadways

- and for buffering structures from future road expansions;
- Constructing the proposed addition into the front setback has no foreseeable impact on existing utilities based on the survey submitted;
- Notice of this petition was sent to INDOT. There has not been any comments from INDOT;
- There are no current plans to widen Chambers Pike in this area. However, due to the proximity of the Right-of-way to this home, the road could be widened and be within 10 feet of the home;
- Conclusion: Approval of the variance **could** 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 A(1) and A(2);
- Nearby uses are primarily residential;
- The Comprehensive Plan designates this area as Rural Residential;
- The I69 right-of-way acquisition increased the front setback encroachment of the home;
- Conclusion: Approval of the variance would not alter the character of the property in a manner that substantially departs from the characteristics sought to be achieved and maintained with 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 A(1) and A(3);
- The purpose of setbacks is to preserve the general character of zoning district;
- Property value tends to be subjective as it is difficult to anticipate adverse effects;
- Conclusion: Approval of the variance would not significantly impact the purposes of the

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design

(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:

- There is no floodplain on site;
- Drainage flows west and should present no complications upon construction of the proposed addition.
- Conclusion: There are no foreseeable detrimental conditions to the use and enjoyment of other properties that would result from the proposed expansion;

(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 could change the design and expand the home in a way that does not further the encroachment into the front setback. However, any addition to the home does require a front setback for the existing home encroachment.

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 – 1904-VAR-22 & 1904-VAR-23 – Beargie

Kaczmarczyk: Questions for staff?

Guerrettaz: I have a couple. So, you will probably have to repeat yourself a little bit. On the north side of the house we are looking at a room addition.

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Creceilius: Yes.

Guerrettaz: And we are looking at 9.7' feet from that east property line as they have got it laid out here on the drawing. Correct?

Creceilius: Correct, if that addition was completed as proposed.

Guerrettaz: And on the proposed deck on the backside, that north corner of that is also subject to the front yard setback. Am I understanding that properly? From the east?

Creceilius: Yes. If the deck was completed it would still be within the front setback. It would be 30.7' feet from the front property line.

Guerrettaz: Ok and even that being behind that new addition that front yard setback still applies.

Creceilius: Yes. The majority of the home is in the front yard setback.

Guerrettaz: I am looking at the dimensions here, it is 40.5' feet from the east line over to the patio. Correct? The 6' foot patio.

Creceilius: Are you referring to the survey?

Guerrettaz: Yeah, I am looking at the drawing. Down there on the bottom, over here, the 40.5' feet that's from the east property line, North Crossover Road, that's 40.5' feet. Correct?

Creceilius: Yes.

Guerrettaz: Had 69 not come through and taken or transferred the property, then we wouldn't be here tonight, other than maybe for the Minimum Lot Size.

Creceilius: That is correct. The property did go through a legal process.

Guerrettaz: The bump out that they needed for I-69 caused the proposed master suite, as it shows in the drawing and the proposed deck to become an issue for the setback. Correct?

Creceilius: Yes.

Guerrettaz: The minimum lot size would have been the same because it was only a 0.077 acres transfer, so it would have been less than the minimum 1 acre.

Creceilius: Correct.

Guerrettaz: Ok. Thank you.

Kaczmarczyk: Any further questions for the staff? Seeing none. Is the petitioner here? Would you like to come and speak, sir? Ok. Is there anyone here who wishes to speak on behalf of the

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petitioner? Anyone who wishes to speak against the petition? Seeing none. Ready for a motion.

**PETITIONER/PETITIONER'S REPRESENTATIVE –
1904-VAR-22 & 1904-VAR-23 – Beargie: None**

SUPPORTERS – 1904-VAR-22 & 1904-VAR-23 – Beargie: None

FURTHER SUPPORTERS – 1904-VAR-22 & 1904-VAR-23 – Beargie: None

REMONSTRATORS – 1904-VAR-22 & 1904-VAR-23 – Beargie: None

ADDITIONAL QUESTIONS FOR STAFF – 1904-VAR-22 & 1904-VAR-23 – Beargie: None

FURTHER QUESTIONS FOR STAFF – 1904-VAR-22 & 1904-VAR-23 – Beargie

Guerrettaz: I can make one. **In the matter of case number 1904-VAR-22 and 1904-VAR-23, Design Standards Variance from Chapter 804, Front Yard Setback Variance,** pardon me that was the variance for 1904-VAR-22. **I am going to break these up into 2 separate votes,** just to keep it straight with the findings. Is that ok with everyone?

Kaczmarczyk: That is fine.

Guerrettaz: **I move that we approve the Design Standards Variance for the Minimum Lot Size, 1904-VAR-23, based on staff report and findings of fact listed there in.**

Kaczmarczyk: I second the motion. Call the vote, please, Larry.

Wilson: Are you doing 1904-VAR-23 first?

Guerrettaz: I am doing 1904-VAR-22 first.

Wilson: 1904-VAR-22 is the Front Yard Setback.

Clements: Front Yard Setback, yes.

Guerrettaz: I am sorry. It listed them differently in the report. Sorry about that. Yes, **I am doing the Minimum Lot Size, 1904-VAV-23,** first, that staff recommends approval for.

Wilson: Ok. The vote is on petition 1904-VAR-23, Beargie Minimum Lot Size. The motion is to approve based upon the findings in the staff report. Margaret Clements?

Clements: Yes.

Wilson: Bernie Guerrettaz?

Guerrettaz: Yes.

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Wilson: Mary Beth Kaczmarczyk?

Kaczmarczyk: Yes.

Wilson: Variance 1904-VAR-23 is approved.

The motion in case 1904-VAR-23, Beargie Minimum Lot Size Variance to Chapter 804, in favor of approving the variance, carried unanimously (3-0).

Guerrettaz: Regarding 1904-VAR-23, I move approval of the

Clements: Its 1904-VAR-22, I am sorry.

Guerrettaz: Yes, **1904-VAR-22, Design Standards Variance to the Front Setback, I move approval for that.**

Clements: Its hardship.

Guerrettaz: **Based on that fact that I-69 in that acquisition has put the property in the position that causes the setbacks to no longer.**

Clements: I **second** the motion.

Kaczmarczyk: Call the roll, please.

Wilson: The motion is on petition 1904-VAR-22, Front Yard Setback. The motion is to approve the Front Yard Variance, based upon alternative findings that the practical difficulties were caused by I-69.

Guerrettaz: Thank you. Yes.

Wilson: Again, a yes vote is a vote to approve the Front Yard Setback. Bernie Guerrettaz?

Guerrettaz: Yes.

Wilson: Mary Beth Kaczmarczyk?

Kaczmarczyk: Yes.

Wilson: Margaret Clements?

Clements: Yes.

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Wilson: The variance is approved 3 to 0.

The motion in case 1904-VAR-22, Beargie Front Yard Setback Variance to Chapter 804, in favor of approving the variance, with alternate findings, carried unanimously (3-0).

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NEW BUSINESS

3. 1907-VAR-39

Cummins Buildable Area Variance to Chapter 804

One (1) 0.3 +/- acre parcel in Benton North Township, Section 34 at 7673
N Tunnel RD. **Zoned SR.**

BOARD ACTION: Kaczmarczyk introduced the petition.

STAFF ACTION: Petition has been continued by the petition.

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NEW BUSINESS

4. 1907-VAR-41

Gilpin Buildable Area Variance to Chapter 804

One (1) 2.89 +/- acre parcel in Clear Creek Township, Section 6 at 2256 S Sunday DR. **Zoned AG/RR.**

BOARD ACTION: Kaczmarczyk introduced the petition.

STAFF ACTION:

Myers: Thank you. Can you guys hear me ok? Ok, I will bring it a little closer. This is for 1907-VAR-41, the Gilpin Buildable Area Variance to Chapter 804. A little bit of a summary here, the petitioner requests one design standards variance from Chapter 804 for construction of a 4,915' square foot single-family residence with a walkout basement. According to Monroe County's GIS data and the available elevation contour data, the proposed location of the single-family residence resides outside of the buildable area requirement outline in Chapter 804 of the Monroe County Zoning Ordinance. The proposed location of the single-family residence exhibits steep slopes and due to the prior existence of a baseball diamond on the property. It is located at 2256 South Sunday Drive. It is in Clear Creek Township and it is a part of the Benchmark Subdivision. It is Lot 12 of that subdivision. It is zoned Agricultural/Rural Reserve. All of the properties around it and in the area are also Agricultural/Rural Reserve. Here are some site conditions. You can kind of see those really close contour lines towards the northeast portion of the property and that is where the old baseball diamond hill used to be. Otherwise the property has got some buildable area in the middle and then it kind of goes downward to a drainage swale towards the back middle towards the south of the property and those are steep slopes as well. But those are naturally occurring. Here is a slope map. I have outlined that a little bit more for you. You will notice that large streak of steep slopes up on the northeast corner of the property and that is the approximate location that they will be placing the single-family residence with the walkout basement. The Comprehensive Plan has it as Rural Residential and here now we have some site photos. The first picture is the petition site. It shows the original baseball diamond. This is from 2011 as the top left picture. The bottom right picture is 2017 imagery of the entire petition site viewing from the south. This next picture in the top left is 2017 imagery of the petition site from the north and then the bottom right picture is pictometry of 2017 and is of the full petition site to the east. Here are some on the ground site photos. This first one here is a view from South Sunday Drive facing west and the bottom right is a view of the construction site stakes and it is facing north. You can kind of see that downward sloping hill that we have here that was originally a part of that baseball diamond. Here are some more site photos of the property and showing some of those steep slopes that exhibit on the property. Here we have the site plan that was submitted with the building permit application. That is how we came across this variance. The permit was submitted and it was staff's finding that the location of that structure, in its current configuration was within the steep slopes that were created by that baseball diamond hill. That is why we are here for the Buildable Area Variance. Over all staff recommends approval of the design standards variance to Chapter 804 for the Buildable Area, based on the findings of fact that are in the packet. I will now take any questions.

RECOMMENDED MOTIONS

Approve the design standards variance to Chapter 804 for Buildable Area (15% Slope Requirement) based on the findings of fact.

FINDINGS OF FACT: Buildable Area (15% Slope)

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 build a structure outside of Buildable Area, in an area with 15% slope or greater (as defined in Chapter 825 Area 2 Regulations);
- The site is Lot 12 in the platted Benchmark Subdivision;
- The site gains access via S Sunday DR, classified as a local road by the Thoroughfare Plan;
- The site is currently vacant;
- The proposed single family residence is approximately 4,915 square feet and will exhibit a walk-out basement;
- Construction of the proposed single family residence is expected to include grading of less than 0.5 acres;
- By building into the manmade slope, there is less soil disturbance required for the construction of the single family residence;
- The area with manmade slope also does not include heavy tree cover. If the variance is denied, the petitioner would be required to clear a separate area on the lot and could self-create a 15% slope for the purposes of constructing a walkout basement;
- The site is adjacent to residential uses and vacant uses;
- The site is not in the FEMA Floodplain;
- The petitioner's site is not within the Environmental Constraints Overlay;
- The site does not appear to contain sinkhole conservancy areas;
- 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 proposed single family residence will include the installation of a new approved septic system;
- The proposed project would not create additional traffic or impact existing utilities in the area;
- 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) and A(2);
- The site is zoned Agriculture/Rural Reserve (AG/RR);
- The site is in a platted subdivision and exceeds lot size requirements for the area;
- Most of the surrounding properties are zoned Agriculture/Rural Reserve (AG/RR);
- The proposed single family residence would meet density, bulk, setback, and area standards for Agriculture/Rural Reserve (AG/RR);
- The proposed single family residence would meet all other Buildable Area requirements from Chapter 804-4(E), excluding the 15% slope requirement;
- The site is an existing parcel of record;
- 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);
- The proposed single family residence would meet density, bulk, setback, and area standards for Agriculture/Rural Reserve (AG/RR);
- The variance from slope requirements only applies to the proposed single family residence structure thus minimizing the amount of land disturbance;
- Conclusion: Approval of the variance would satisfy the design standard sought to be varied.

(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);
- Drainage on the property runs southeast into a swale near the middle of the property;
- 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:

- Property value tends to be subjective as it is difficult to anticipate adverse effects;
- 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 proposed location for the single family residence leverages a pre-existing manmade land formation (the old baseball diamond) to construct a home with a walk-out basement;
- Other locations on the property within the Buildable Area would require the driveway to be constructed over/through the steep slopes created by the manmade land formation;
- If the variance is denied, the petitioner would be required to clear a separate area on the lot and could self-create a 15% slope for the purposes of constructing a walkout basement.

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 – 1907-VAR-41 - Gilpin

Clements: I have no questions.

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Kaczmarczyk: Bernie, any questions?

Guerrettaz: I am just kind of curious. With that baseball diamond that is not a naturally occurring slope, correct?

Myers: That is correct.

Guerrettaz: When that subdivision was platted that slope was there at the time and so we have the same situation if we are crossing a drainage swale that is put on a county road that is built and constructed on a stable, I mean it's a stable piece of property. I guess I am wondering why we are requiring a variance on that.

Wilson: The basic answer is the ordinance does not allow a waiver if there is buildable area in the lot. If there was no place to build it other than above a 15 percent slope, they would be entitled to waivers because it's a previously platted lot. But since it's not and there is plenty of available, buildable area we can't really grant the waiver, under the current terms of the ordinance.

Guerrettaz: Ok, well, let me go through my motion and then maybe something we can talk about. Is everybody ready for a motion?

Kaczmarczyk: Would the petitioner like to speak? If you can sign in, sir.

PETITIONER/PETITIONER'S REPRESENTATIVE – 1907-VAR-41 - Gilpin

Kaczmarczyk: Raise your right hand. Swear to tell the truth and nothing but the truth?

Gilpin: Yes, I do.

Kaczmarczyk: Thank you sir, go ahead.

Gilpin: So, you kind of see it on the map there, there is some buildable area. I guess the question is why there as opposed to some of the buildable area and I think this kind of touched on all of the areas I was reasoning for. The additional carbon footprint that would be created with that I believe is kind of unnecessary considering the spot. Obviously there is an aesthetic piece of it. If it's built behind there then everybody driving by all they are going to see is the roof as opposed to a house and from my own standpoint we really didn't want to look at the side of the hill when we are looking out our front window. That is kind of where we are at with that and obviously if you move away from the road the additional cost is created so we are kind of hoping to avoid that piece as well. Our contractor is here as well as hopefully a future neighbor who is also a civil engineer, took a look at this to make sure this is a safe, buildable place. They are more than willing to talk or answer any questions if you have anything.

Kaczmarczyk: Any questions for the petitioner?

Clements: I have none.

DRAFT

Kaczmarczyk: Thank you sir.

Gilpin: Thank you.

Kaczmarczyk: Anyone else here that would like to speak on behalf of the petitioner?

SUPPORTERS – 1907-VAR-41 – Gilpin

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

Kluesner: Yes, ma'am I do.

Kaczmarczyk: Thank you sir.

Kluesner: My name is Tony Kluesner and I as Eric said have been helping them lay the house out on the lot. Some of the pictures that were provided were mine. Basically I am here if you have any technical questions I might be able to answer.

Kaczmarczyk: Any questions?

Clements: I have none.

Kaczmarczyk: Ok, no questions. Thank you so much for coming.

Kluesner: You are welcome. Thank you very much.

Kaczmarczyk: Anyone else wish to speak on behalf of the petitioner? Anyone wish to speak against the petitioner? Seeing none. I will call for a motion.

FURTHER SUPPORTERS – 1907-VAR-41 – Gilpin: None

REMONSTRATORS - 1907-VAR-41 – Gilpin: None

ADDITIONAL QUESTIONS FOR STAFF – 1907-VAR-41 – Gilpin: None

FURTHER QUESTIONS FOR STAFF – 1907-VAR-41 - Gilpin

Guerrettaz: **In case number 1907-VAR-41, Buildable Area requirement of Chapter 804, I move that we approval the Design Standards Variance, based on staff's findings and description laid out in the report.**

Clements: I **second** the motion.

Wilson: The motion is approve 1907-VAR-41, the Gilpin Buildable Area Variance, based upon the findings. A vote in favor is a vote to grant the variance. Mary Beth Kaczmarczyk?

DRAFT

Kaczmarczyk: Yes.

Wilson: Margaret Clements?

Clements: Yes.

Wilson: Bernie Guerrettaz?

Guerrettaz: Yes.

Wilson: The variance is granted 3 to 0.

The motion in case 1907-VAR-41, Gilpin Buildable Area Variance to Chapter 804, in favor of approving the variance, carried unanimously (3-0).

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NEW BUSINESS

5. 1908-VAR-42 McCullough Minimum Lot Size Variance to Chapter 804

6. 1908-VAR-43 McCullough Minimum Lot Width Variance to Chapter 804

One (1) 1.0 +/- acre parcel in Clear Creek Township, Section 9 at 7736 S Zikes RD. **Zoned AG/RR.**

BOARD ACTION: Kaczmarczyk introduced the petition.

STAFF ACTION:

Behrman: This site is located at 7736 South Zikes Road in Clear Creek Township, Section 9. The lot is zoned Agricultural/Rural Reserve and so basically we are here because the petitioner would like to put in a 344' square foot pool behind their home. The minimum lot size is 2.5 acres for the Agricultural/Rural Reserve zone and this lot is only 1 acre in size. In addition the minimum lot width is 200' feet at the building line and the deed shows that it is only 132' feet wide. We just aren't even hitting the waiver requirements so we are here for a variance from these two design standards. The Comprehensive Plan lists it as Rural Residential and this is the site conditions. There is an ingress/egress easement that is 25' feet that runs along the northern property line and then there is the one home from about 1960 and a shed on the site. These are the slope conditions. The pool where they have it proposed is not within steep slopes and should meet all of the other design standards. I did a little analysis just depicting in green all of the other lots within a quarter mile radius that do not meet the minimum lot size standards and the blue stars represent where we do not see minimum lot width, so we do have a couple of other lots that are in the same situation. These are some of the site photos. The bottom one is basically showing the rear of the house and where the pool will be going. We have another view of that and an aerial photo of the lot. This is the petitioner's letter and site plan. I did confirm where the septic system is just to make sure the pool was not going to be built upon that. Staff recommends approval of both the Minimum Lot Size and Minimum Lot Width requirements to Chapter 804, based on the findings of fact. Any questions?

RECOMMENDED MOTION:

Staff recommends **approval** of both the minimum lot size and minimum lot width requirements to Chapter 804 based on the findings of fact.

FINDINGS OF FACT: Minimum Lot Size Chapter 804

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 a 21' diameter pool (346 sq. ft.) to be built on the property;

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- There are no designated natural or scenic areas nearby;
- The petitioner's site is not located in the Environmental Constraints Overlay area;
- **Conclusion:** Approval of the variance 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 A(1);
- S Zikes Road is a local road that runs along the eastern property line;
- The pool will not be in the 25' ingress / egress easement that runs along the northern property line;
- Adding a pool will have no foreseeable impact on utilities;
- The site utilizes a septic system;
- **Conclusion:** Approval of the variance 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 A(1) and A(2);
- The property is zoned Agriculture Rural Reserve (AG/RR);
- The required minimum lot size is 2.5 acres;
- The lot size measures approximately 1.0 acres;
- The use is residential with surrounding areas being residential and agricultural;
- The Comprehensive Plan designates this area as Rural Reserve;
- This is a preexisting lot that has not changed dimensions since before the current ordinance;
- There are two other lots within a quarter mile radius from the petition site, zoned AG/RR, that do not meet minimum lot size requirements;
- The proposed residential addition will meet all required setbacks;
- **Conclusion:** Approval of the variance would not alter the character of the property in a manner that substantially departs from the characteristics sought to be achieved and maintained with 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;

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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 A(1) and A(3);
- The purpose of the minimum lot size is to preserve the general character of zoning district;
- There are two other lots within a quarter mile radius from the petition site, zoned AG/RR, that do not meet minimum lot size requirements;
- **Conclusion:** Approval of the variance would not significantly impact the purposes of the design.

(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 A(1) and A(3);
- The lot drains to the northeast;
- The proposed pool does not interfere with any easements or utilities, and exceeds minimum setbacks;
- **Conclusion:** There are no foreseeable detrimental conditions to the use and enjoyment of other properties that would result from the proposed expansion.

(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:

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- Practical difficulties have been demonstrated in that the lot exists in the current configuration, which does not meet the minimum lot size for the zoning district (AG/RR);
- The home (ca. 1960) was preexisting at the time of the zoning ordinance adoption in 1997, which required the minimum lot size of 2.5 acres;
- Petitioner has applied for two variances, which is the minimum necessary in order to do further development on this preexisting nonconforming lot.

FINDINGS OF FACT: Minimum Lot Width

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 a 21' diameter pool (346 sq. ft.) to be built on the property;
- There are no designated natural or scenic areas nearby;
- The petitioner's site is not located in the Environmental Constraints Overlay area;
- **Conclusion:** Approval of the variance 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 A(1);
- See Findings A(1);
- S Zikes Road is a local road that runs along the eastern property line;
- The pool will not be in the 25' ingress / egress easement that runs along the northern property line;
- Adding a pool will have no foreseeable impact on utilities;
- The site utilizes a septic system;
- **Conclusion:** Approval of the variance 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 A(1) and A(2);
- The property is zoned Agriculture Rural Reserve (AG/RR);
- The required minimum lot width is 200’;
- The lot width measures approximately 132’ at building line;
- The use is residential with surrounding areas being residential and agricultural;
- The Comprehensive Plan designates this area as Rural Residential;
- This is a preexisting lot that has not changed dimensions since before the current zoning ordinance;
- There are approximately four lots in a quarter mile radius, zoned AG/RR, that do not meet minimum lot width requirements at building line;
- **Conclusion:** Approval of the variance would not alter the character of the property in a manner that substantially departs from the characteristics sought to be achieved and maintained with 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 A(1) and A(3);
- The purpose of the minimum lot width is to preserve the general character of zoning district;
- **Conclusion:** Approval of the variance would not significantly impact the purposes of the design.

(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 A(1) and A(3);
- The lot drains to the northeast;

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- The proposed pool does not interfere with any easements or utilities, and exceeds minimum setbacks;
- **Conclusion:** There are no foreseeable detrimental conditions to the use and enjoyment of other properties that would result from the proposed expansion.

(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:

- Practical difficulties have been demonstrated in that the lot exists in the current configuration, which does not meet the minimum lot width for the zoning district (AG/RR);
- The home (ca. 1960) was preexisting at the time of the zoning ordinance adoption in 1997, which required the minimum lot width of 200 feet at building line;
- The configuration of the lot is such that the residential addition would meet neither the minimum lot size nor minimum lot width requirements no matter the design or location.

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 – 1908-VAR-42 & 1908-VAR-43 – McCullough

Kaczmarczyk: Questions for staff?

Clements: I have none. I see it's an above ground pool so I have no questions.

Kaczmarczyk: Is the petitioner here? Would you like to speak, sir? Ok, anyone like to speak on behalf of the petitioner? Anyone wish to speak against the petitioner? Seeing none. Call for a motion.

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**PETITIONER/PETITIONER'S REPRESENTATIVE –
1908-VAR-42 & 1908-VAR-43 – McCullough: None**

SUPPORTERS – 1908-VAR-42 & 1908-VAR-43 – McCullough: None

FURTHER SUPPORTERS – 1908-VAR-42 & 1908-VAR-43 – McCullough: None

REMONSTRATORS – 1908-VAR-42 & 1908-VAR-43 – McCullough: None

**ADDITIONAL QUESTIONS FOR STAFF –
1908-VAR-42 & 1908-VAR-43 – McCullough: None**

FURTHER QUESTIONS FOR STAFF – 1908-VAR-42 & 1908-VAR-43 – McCullough

Guerrettaz: **In case number 1908-VAR-42 and 1908-VAR-43, Design Standards Variance Chapter 804 Minimum Lot Size requirement and Chapter 804 Minimum Lot Width requirements, I move approval of the variances, based upon staff's findings, recommendations and that which is enclosed in the report.**

Clements: I **second** the motion.

Wilson: And that was for both?

Guerrettaz: Yes.

Wilson: The vote is on petition 1908-VAR-42 and 1908-VAR-43, McCullough Minimum Lot Size and Minimum Lot Width variances respectively. A vote in favor is a vote to approve both variances based upon the findings. Margaret Clements?

Clements: Yes.

Wilson: Bernie Guerrettaz?

Guerrettaz: Yes.

Wilson: Mary Beth Kaczmarczyk?

Kaczmarczyk: Yes.

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

The motion in cases 1908-VAR-42, McCullough Minimum Lot Size Variance to Chapter 804, and 1908-VAR-43, McCullough Minimum Lot Width Variance to Chapter 804, in favor of approving the variances, carried unanimously (3-0).

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NEW BUSINESS

7. 1908-VAR-44

Goris and Klitzing Buildable Area Variance to Chapter 804

One (1) 0.19 acre parcel in Benton North Township, Section 34 at 7675 N Tunnel RD. **Zoned SR.**

BOARD ACTION: Kaczmarczyk introduced the petition.

STAFF ACTION:

Myers: Thank you. This is for the Goris and Klitzing Buildable Area Variance to Chapter 804. A little bit of summary here, the petitioner requested a design standards variance from Chapter 804-4E of the Monroe County Zoning Ordinance. The variance request is to demolish the current residential structure and build a new residence along with a new septic system outside of buildable area. The proposed structure will be 1,855' square feet in total, including an attached, raised deck. If the variance request is approved the petitioner will be required to meet Improvement Location Permit requirements, including setbacks and all other design standards of construction of the new single-family residence. The property is located at 7675 North Tunnel Road in Benton North Township. It is right on Lake Lemon. The zoning is Suburban Residential and most nearby zones are also Suburban Residential and Forest Reserve as well. The parcel is currently occupied by a single-family residence and a utility shed. The petition site totals in about 0.19 acres and the current owners of the petition site are Michael Klitzing and David Goris. The property features restrictive slopes and there is a FEMA Floodplain on the site that fronts Lake Lemon and there are no karst features on the property. Here we have a slope map kind of visualizing those steep slopes and how restrictive they are on the property. The Comprehensive Plan has this property designated as Rural Residential. Here we have some site photos of the property. The first one, the top left, is facing east and is the view of the gravel driveway that you must take to access the property. If you look into the background there is a drive up that goes onto North Tunnel Road and there is also another drive up behind you that goes up to North Tunnel Road. The bottom right photo is a view of the current single-family residence facing north with Lake Lemon in the background. The top left photo is facing northwest is a view of the single-family residence and the storage shed that is also present on the property. The bottom is another view of the residence slightly shifting to the right, your view to the right and then the top right photo is a view of the side yard and a little bit of that deck that they have there and Lake Lemon as well. Here are some more site photos of the current residence along with some side yard photos for the property. Here now we have the proposed site plan for the property along with the petitioner's letter for the Board of Zoning Appeals. Now this petition was going to be accompanying another petition that one that was continued, they are actually neighbors and there has been some drainage concerns about the eastern property line between the 2 neighbors. One of the conditions that we have placed on this approval is devising some sort of storm drainage plan between the 2 property owners to make sure that is corrected. Staff recommends approval of the design standards variance to Chapter 804 for Buildable Area, based on the findings of fact and the following condition; that the petitioner submit a drainage that is satisfactory to the County's MS4 Operator. I will take any questions.

RECOMMENDED MOTIONS:

Approve the design standards variance to the Buildable Area standard in Chapter 804 based on the findings of fact subject to the following condition:

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1. The petitioner submit a drainage plan that is satisfactory to the County's MS4 Operator.

FINDINGS OF FACT:

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 build a structure outside of Buildable Area, in an area with slope 15% or greater (as defined in Chapter 825 Area 2 Regulations);
- The site is not in a platted subdivision;
- The site gains access via N Tunnel Road, a gravel road;
- The site currently maintains a single family residence of 875 square feet and a deck that includes 586 square feet for a total coverage area of 1,461 square feet;
- The proposed new residence is approximately 1,855 square feet, which includes 1,033 square foot home and 597 square foot raised deck;
- The site is adjacent to residential uses;
- The site has FEMA floodplain on the north side of the lot;
- The petitioner did do a Letter of Map Amendment (LOMA) to move the floodplain further away from the property;
- The site is adjacent to Lake Lemon, which can be considered a natural or scenic area;
- Conclusion: The approval, including any conditions or commitments deemed appropriate, will not be injurious to the public health, safety, and general welfare of the community.

(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 N Tunnel Road, a gravel road;
- N Tunnel Road is designated as a Local Road;
- The new single family residence will coincide with the installation of a new septic system;
- 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 rezone the property; and,

Findings:

- See Findings under Section A(1);
- The site is zoned Suburban Residential (SR);
- The character of the Suburban Residential (SR) District is defined as that which is primarily intended for existing, possibly nonconforming, recorded single family residential subdivisions and lots of record. Its purposes are to accommodate existing, substandard subdivision developments and lots, to permit the build-out of single family residential uses in those developments and lots, to encourage the development of sanitary sewer systems for the existing development in the Lake Lemon area, to discourage the development of nonresidential uses, to protect environmentally sensitive areas, such as floodplain, karst, and steep slopes, and to maintain the character of the surrounding neighborhood. Therefore, the number of uses permitted in the SR District is limited. Some uses are conditionally permitted. The conditions placed on these uses are to insure their compatibility with the residential uses. The need for expanding this district beyond the areas designated on the Official Zone Maps on the date of the adoption of the zoning regulations is not anticipated or encouraged.
- Most of the surrounding properties are zoned Suburban Residential (SR);
- The proposed single family residence would meet density, bulk, setback and area standards for Suburban Residential (SR);
- The proposed single family residence would meet all other Buildable Area requirements from Chapter 804-4(E), excluding the 15% slope requirement;
- The site is an existing parcel of record;
- 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;
- The proposed single family residence would meet density, bulk, setback and area

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standards for Suburban Residential (SR);

- The variance from slope requirements only applies to the new single family residence structure 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 and B(1);
- 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:

- Property value tends to be subjective as it is difficult to anticipate adverse effects;
- 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:

- Petitioner has applied for this variance, which appears to be the minimum variance necessary to eliminate practical difficulties in the use of the property. Practical difficulties do exist on the property as there are no locations to construct the proposed home within the Zoning Ordinance's Buildable Area standard.

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. 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.

The Board must establish favorable finding for all three criteria in order to legally approve a design standards variance.

QUESTIONS FOR STAFF – 1908-VAR-44 – Goris & Klitzing

Kaczmarczyk: Any questions for staff?

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Clements: When is says raised deck what does that exactly mean? How far will it be raised? Is there a height limitation?

Myers: I don't believe that there is a particular height limitation that is in the design standards of Chapter 804 but in the packet I think that there some included construction plans that show the specs of the raised deck.

Clements: I have looked at those and I just haven't easily determined. I think it's the fine print.

Myers: I understand.

Clements: Ok, so I think I understand now. It is about 12' feet. But it becomes in line with the first floor as it slopes from the property so other than that I have no questions myself.

Kaczmarczyk: Any questions, Bernie? Ok. Is the petitioner here? Sign in, please sir.

PETITIONER/PETITIONER'S REPRESENTATIVE – 1908-VAR-44 – Goris & Klitzing

Kaczmarczyk: Raise your hand. Do you swear to tell the truth and nothing but the truth?

Klitzing: I do.

Kaczmarczyk: Please state your name.

Klitzing: My name is Michael Klitzing. I am one of the petitioners for this project. Thank you for your consideration tonight as you review and consider our request. Basically what we are looking to do, the house that is shown very nicely by staff, we actually did a little lipstick on the pig, if you will. The house looks relatively decent on the outside but when you get in to the inside it is very small. It actually has sort of a kitchenette, an area that really is not very habitable if you are going to have very many people in there. The upstairs is basically a studio. It is an open area where you have a bed a little bit of a bathroom. When we purchased the property our intent was to ultimately build something new that would better meet the needs of our family and also improve the overall neighborhood conditions. This particular property when we were looking at it we did an inspection report and was really unable to identify where the existing septic is. So, this will be something that will be very beneficial to the lake because it will be making sure that there is a functioning, proper septic system approved, properly approved. We just received conformation on the permits today. With regards to the deck, I think how you described it is accurate.

Clements: Great. Thank you.

Klitzing: With regard to that I also do have the builder here, so if there are any specific technical questions he is here to be able to address those questions as well.

Kaczmarczyk: Any questions for the petitioner?

Clements: I just have one, just one other question. Is it alright if I insert it at this time? And I don't

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even think it's a question, it's an emphasis on a pre-existing statement. It is my understanding that if we approve it tonight that Stormwater will go over with an effective drainage plan. Is that correct?

Myers: Yes, if the petitioner comes into the office and requests that the Drainage Engineer get involved in coming up with some sort of plan that can best alleviate the current drainage issues that would be what we are looking for.

Clements: Ok, great. Thank you.

Kaczmarczyk: So, we would be approving it with that condition. Correct?

Klitzing: I would comment too that my property is the lower the property so I can pretty much assure you that none of our water will be going their direction.

Clements: But we are concerned about you too.

Klitzing: I appreciate that. Thank you.

Wilson: For the record, could you identify where the septic tank is going to go on that lot?

Klitzing: I believe it is going to go toward the front, so between where the existing house is and the tree line but outside the flood zone. We do have a FEMA, we go a letter of map adjustment.

Wilson: Not the lake side but the other side?

Klitzing: No, on the lake side.

Wilson: There is a setback from the water's edge.

Klitzing: That is correct.

Wilson: For a septic tank.

Klitzing: We are aware of that and it is my understanding that that has all been reviewed by the Health Department and they were pleased with where we were placing it.

Guerrettaz: There is a septic permit submitted or approved for this petition?

Klitzing: There is. We received it today. We forwarded it to staff so they have it for their records as well.

Myers: They emailed it right before this meeting started.

Kaczmarczyk: Any further questions for the petitioner? For the builder?

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Clements: I have no questions for the builder. I don't but may be do you? Thank you.

Kaczmarczyk: anyone else here who wishes to speak on behalf of this petition? Anyone here who wishes to speak against this petitioner? Seeing none. I call for a motion.

SUPPORTERS – 1908-VAR-44 – Goris & Klitzing: None

FURTHER SUPPORTERS – 1908-VAR-44 – Goris & Klitzing: None

REMONSTRATORS – 1908-VAR-44 – Goris & Klitzing: None

ADDITIONAL QUESTIONS FOR STAFF – 1908-VAR-44 – Goris & Klitzing: None

FURTHER QUESTIONS FOR STAFF – 1908-VAR-44 – Goris & Klitzing

Guerrettaz: **In the matter of case number 1908-VAR-44, Buildable Area Requirement of Chapter 804. I move that we approve the design standards variance with the condition that petitioner submit a drainage plan that is satisfactory to the county MS4 Operator, based on the findings of fact, listed in the staff report.**

Clements: I **second** the motion.

Wilson: The vote is on petition 1908-VAR-44, Goris and Klitzing Buildable Area Variance. A vote in favor is a vote to grant the variance based upon the findings. Bernie Guerrettaz?

Guerrettaz: Yes.

Wilson: Mary Beth Kaczmarczyk?

Kaczmarczyk: Yes.

Wilson: Margaret Clements?

Clements: Yes.

Wilson: The variance is granted 3 to 0.

The motion in case 1908-VAR-44, Goris and Klitzing Buildable Area Variance to Chapter 804, in favor of approval of the variance with the condition as set forth in the motion, carried unanimously (3-0).

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NEW BUSINESS

- 8. 1908-VAR-45** **Cornwell and Patzner Front Setback Variance to Chapter 804**
9. 1908-VAR-46 **Cornwell and Patzner Parking Setback Variance to Chapter 806**
One (1) 1.0+/- acre parcel in Perry Township, Section 28 at 5450 S Old State Road 37. **Zoned PB.**

BOARD ACTION: Kaczmarczyk introduced the petition.

STAFF ACTION:

Crecelius: Thank you. This property is 2 design standards requests from Chapter 804 and Chapter 806. There is a Front Setback Variance from Chapter 804 and a Parking Setback from Chapter 806. The petition site is located in Perry Township, Section 28. It is a 1 acre lot. It is currently zoned Pre-existing Business. It is surrounded by Estate Residential, RS3.5, and Limited Commercial. The variances came about due to an attempt to accommodate a riparian stream that is on the western, it is exactly on the western property boundary. It's mainly underground. It is a little difficult to see in aerial imageries. But once you are there you do notice it. The exact riparian setback is unknown and would require a survey. This was not submitted at the time of filing, despite staff recommendation. The MS4 Operator did offer a recommendation and we will get to that at the end. They would require that that property was surveyed as well. The variances requests are to accommodate a general contractor, the construction of the building that would be used for a general contracting use. The minimum front setback is 50' feet from South Old State Road 37. They are requesting a 25' foot setback. The minimum parking setback is 10' feet. They are requesting a 0' foot setback. There is a small slope running parallel with South Old 37. This would be the parking area. Here is a site photo from several weeks ago. This lot was previously a mobile home in the 1980's. Because most of the stream is underground it is difficult to take a photo of it. The Comprehensive Plan, the MCUA Phase I, which was adopted, identified this site as a Mixed Use area and Phase II identified it as Gateway South, which is the intention to preserve historic assets while accommodating sensitive infill and redevelopment in the southern gateway. The top left photo, this is the site plan that was originally mocked up during a predesign meeting with the petitioner. Here we identify what the setbacks would be and they drew in their proposed building site. The bottom right photo shows the petition parcel is located within the circle and that just illustrates the 50' feet across the petition site. Approval would allow construction of a building 25' feet from the right-of-way and parking 0' feet from the right-of-way. The MS4 Coordinator stated that Stormwater would require a dedication of a drainage easement for the ditch and stream passing the site. The easement width is to be 20' feet beyond the limits of the floodplain. The floodplain is to be determined by a qualified representative of the petitioner. In the predesign the coordinator stated that it would have to be past the 100 year floodplain elevation plus 2 feet of freeboard. Staff is recommending denial for both variance requests due to the lack of information. Does anybody have any questions?

RECOMMENDED MOTION:

Deny the design standards variance to the Front Setback due to the findings of fact.

Deny the design standards variance to the Parking Setback due to the findings of fact.

FINDINGS OF FACT: Front Yard Setback

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 site is 1.0 +/- acres and is zoned Pre-Existing Business;
- The site is unoccupied, and structurally only holds electrical hook-ups for the former mobile home park;
- The site has access through an ingress/egress easement;
- There is no evidence the site is located on environmentally sensitive land;
- There is no evidence of karst features, FEMA floodplain, or ECO areas.
- A stream is located on the western edge of the property;
- Approval of the variance would allow the petitioner to construct a building 25' from the ROW (a 25' encroachment);
- The petitioner would be required to submit a commercial site plan prior to development. The MS4 Operator will ensure that the stream is appropriately buffered.
- Conclusion: It would not interfere with 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 A (1);
- The parcel is addressed off of S Old State Road 37, a Minor Arterial Road (100');
- The minimum building front setback from the ROW is 50';
- The site has access to water and sewer;
- 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 A(1) and A(2);
- The petitioner did not submit survey information that could provide justification for the

front setback variance;

- Surrounding properties do not meet the 50' from Right-of-way setback required;
- The comprehensive plan identifies the site location as mixed-use;
- 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 A (1), A (2), and A (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 A (1);
- Approval of the variance would allow the petitioner to apply for a commercial site plan to build on the site without disturbing the stream located on the western edge of the property;
- During the predesign meeting, it was identified that a riparian setback will be required for development of the lot (see Exhibit 3);
- Terry Quillman, MS4 Operator requested that the setback consist of the 100 year flood elevation plus 2' above free board;
- This information can only be identified through a property survey and was not provided by the petitioners;
- The petitioner will be required to submit a property survey in order to receive commercial site plan approval and subsequent building permits;
- Conclusion: 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.).

(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:

- See findings under (A)(1);
- Approval of this variance is not necessary for development of the site;

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.

FINDINGS OF FACT: Parking Setback

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 construct a parking lot 0' from the ROW;
- The petition site is zoned Pre-Existing Business (PB);
- The minimum distance from the ROW that parking is allowed is 10', the petitioners are requesting 0' setback (50' from the centerline of the road);
- The petition site is 1.0 +/- acres and is unplatted;
- There is no evidence the site is located on environmentally sensitive land;
- There is no evidence of karst features, FEMA floodplain, or ECO areas.
- A stream is located on the western edge of the property that will require an unknown setback;
- Conclusion: potential negative effects of variance approval are unknown due to lack of a

survey;

(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 A (1);
- The parcel is addressed off of S Old State Road 37, a Minor Arterial Road (100');
- 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 A(1) and A(2);
- Surrounding use is primarily residential and commercial;
- There are other businesses to the north that have parking areas that encroach into the right-of-way;
- 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 A (1) and A (3);
- All other design standard requirements will be met;
- 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 A (1);
- Approval of the variance would allow the petitioner to build on the site without disturbing the stream located on the western edge of the property;
- During the predesign meeting it was identified that a riparian setback will be required for development of the lot (see Exhibit 3);
- Terry Quillman, MS4 Operator requested that the setback consist of the 100 year flood elevation plus 2' above free board;
- This information can only be identified through a property survey and was not provided by the petitioners;
- The petitioner will be required to submit a survey prior to commercial site plan approval and will be required to meet the MS4 Operator's buffer area for the stream;
- Conclusion: 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.);

(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:

- See findings under (A)(1);
- Approval of this variance is not necessary for development of the site;

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.

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QUESTIONS FOR STAFF – 1908-VAR-45 & 1908-VAR-46 – Cornwell & Patzner

Kaczmarczyk: Any questions for staff?

Clements: Could I reserve the right to ask them later?

Kaczmarczyk: Yeah.

Clements: Thank you.

Kaczmarczyk: Is the petitioner here? Would you like to come forward and speak, sir?

**PETITIONER/PETITIONER'S REPRESENTATIVE –
1908-VAR-45 & 1908-VAR-46 – Cornwell & Patzner**

Kaczmarczyk: Sign in please. State your name.

Patzner: Neil Patzner.

Kaczmarczyk: Want to raise your hand for me, please. Do you swear to tell the truth and nothing but the truth?

Patzner: I do.

Kaczmarczyk: Thank you, sir.

Patzner: This property is really not mine. I am buying it. It is a commercial property. The only way that I can get a building on here is with a variance and so basically if this variance doesn't get through I can't purchase this for my building. It's kind of a stipulation that I have in the clause of buying this property because then this lot is not worth buying at this time. I can't stick a lot of money into this not knowing that I am going to get it. I am not going to spend money on surveys and things like this without getting approval for variances because like I said it's not my property.

Kaczmarczyk: Ok.

Clements: Could I ask you how badly you want it?

Patzner: Obviously, you have seen me before. I have my business right across the street.

Clements: I see.

Patzner: Basically, this one is commercial. Its frontage road. It's not a necessity for me. So, would it be nice? Yes. It's not a pushing matter for me but yes it would be an easy transition for me. I really, I mean, I would like the property, yes.

Clements: That's helpful to know because otherwise I don't exactly why we are here. If it's

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pertinent to the expansion of your business and if it's pertinent to the workability of your business and this is an employment area that's one argument in favor of kind of approving variances that otherwise would not be approved. But if it's not so vital to your business, I am just not, I don't quite know how to think about this.

Patzner: As you know, the situation that I have is that I don't have a sewer system for my other piece of property. We are dealing with and remember I said I was going to find another option and this came up. So, this is now my other option that I am trying to get out of the other place but things just seem to never work out.

Clements: I'm sorry. Ok, well, I have no other questions for you but does anyone else?

Kaczmarczyk: Any questions, Bernie?

Guerrettaz: I am just kind of curious here, so is this property on sewer?

Patzner: It is on septic and I talked to Randy Raines. He said since it basically a low use building he would allow me for a septic repair for this site. Because there is no sewer available for this site.

Guerrettaz: If I remember right there is a private force main that goes east/west along Church, I think.

Patzner: Correct and that's a private main which I can't access.

Guerrettaz: I understand. I just wanted to clarify to make sure I wasn't thinking wrong with where the infrastructure was. The design variances that are being requested, and I am not on my phone texting or looking at crazy stuff here but I mean, they are consistent with a lot what's in the area if you look at what is there, the car lot, the shopping center. It doesn't mean that they meet the ordinance which I understand why staff has got their recommendation.

Patzner: I believe the building has to sit back 70' feet from the center of the road. So, there is a highway easement that's a certain distance. My building is already 70' feet, that's the minimum that I can bring it to the center line of the road. It is not as close as what the description says it is.

Guerrettaz: Right.

Patzner: It says a 0' setback but realistically it's a still, the building itself is 70' feet from the center line of the road.

Clements: So, it would be hard for you to position that anywhere else on the property without the...

Patzner: The further south you go it's going to run into that water easement, so with the width of the building and the size of the building that I want, that's kind of like the only option that I have.

Crecelius: May I clarify the staff recommendation? We are recommending denial based on just the

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lack of knowledge, mainly we don't want to see the petitioner getting into a position where he is requesting very specific setbacks that are not going to work with the unidentified stream requirement.

Guerrettaz: I understand. I am trying to look a little bit ahead here. How far is the rear setback or the side yard setback for the west? How much would that have to be? How much room does he have to move the building to the west, to the back property line?

Crecelius: Well, that is what's dependent on the survey is that back property line is essentially right on the stream and we don't know how much he is going to have be.

Guerrettez: I am hearing buffer is going to dictate where that setback is.

Crecelius: Yes, where that front setback for the parking and the building are going to go. So, without knowing it.

Guerrettaz: I would be willing to look at this. I understand not wanting to invest in the expense but, you know, it is kind of hard to understand what we are looking at when we don't have anything that gives us solid dimensions that your variance request is based on. I mean, it may be that if you had a drawing that was dimension properly to scale you might find that you might not have as much of a hurdle as what you do. I would be willing to table this if you want look at getting more information to satisfy staff. But as it is now I don't think that I can, I don't think I could vote to approve the variances because I don't think I have enough good information to make a decision based on that.

Clements: I think the only thing I can do is give you indication of where I stand so that you know fairly how much you should go forward and given that the other members of the Board aren't here, my stance is I don't think it really alters the character of the development site to have the parking lot closer to the road and so if in their attempts to protect you from complete disaster with the riparian easement and all of that, my inclination would be to approve request. But based on the lack of information we have here today, I, we shouldn't do that and I think that our good county planning department can help you create a successful plan if that is what you want. Is that correct?

Guerrettaz: Yeah, I think that is fair and I am also wondering if you have by chance done a utility locate on the property just to see maybe where utilities may lie?

Patzner: No. Everything is pretty much above ground. There is a gas main that was just put in on the other side of 37, so I know where the gas main is. That went on my property that I own, so I know where the gas main is. All of the utilities have pretty much been located on that side of the road, so I know where all of the utilities are.

Guerrettaz: Let's explore tabling or offering a continuance to the petitioner, if he wants it. What is the difference between table and continue? Same thing?

Wilson: Yeah, I think you can move to table it easily.

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Guerrettaz: So, if we move to table it, then the petitioner, if the petitioner decides that he just wants to abandon the concept of the property that would give you the room to maybe look at a couple of options, maybe see what the cost would be to maybe provide new information that would shed some more light on it because again I see the character of what you are doing is similar to what is in the area. That doesn't mean that once I get the drawing or see something that I am going to vote yes, ok. I don't want you to base it on that but would like to give you the opportunity unless you tell us you don't want it, to table this for this meeting and work with staff to get on a petition within the next 3 months, there is a good chance that if we continue it to the next meeting he may not be able to contractor somebody to do the work, do the drawings, get everything to your satisfaction.

Wilson: May I make a suggestion that we continue it generally and let him move forward?

Guerrettaz: That would be fine. If you would want that if you just want to say vote and go and I think that we are minable to what every direction, I am just trying to give you an option.

Patzner: I guess I really don't understand what you just said.

Guerrettaz: What I just said is I think if we continue this it will give you the opportunity to go speak with some people that could maybe help put something on paper that is more of a refined drawing and shows where the building is going to be, where the property lines are relative to the riparian buffer, get a utility locate, which doesn't cost anything and get that one there where you can kind of see and plan where your improvements are going to be based on the ground. Then if you see and decide this still isn't going to work or I'm not going to come back, I don't want to spend the money you can tell staff I don't want to come back and they will just abolish the petition. If you do want to come back after you talk to some people and see what is possible it gives you the opportunity to do that.

Patzner: Ok.

Guerrettaz: Does that make sense?

Patzner: Yes, basically for the purchase agreement they have the right to pull away if I don't get a variance by the end of this month.

Clements: But their property has been for sale for a long time, so I would just try to figure out what's in your business and your heart if you want to go for this and there are some many good people here who want to work with you and, you know, we want to see you succeed. So, just figure out what you want to go and meanwhile you are in the system and you are making progress so that is all good.

Kaczmarczyk: Plus it might be possible that the seller might be amendable to helping with the cost of the survey in order to move their property and to make their property more marketable.

Clements: That's true.

Patzner: Right. So, basically you want a survey and a layout of the ...

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Clements: Utilities and a layout of the proposed building with consideration for the riparian easement and then work with planning, they are going to help you, that's what they are there for. They are really dedicated, so let us know what you want and how you want it and they will tell you whether or not it's workable and just keep at it.

Patzner: I don't know what happened when I turned the paperwork in, everything I thought was needed for this and I don't know what happened to Jackie. Is Jackie on vacation?

Crecelius: No, she had changes with her job, she is focusing more on long-term planning, so your case was passed onto me.

Patzner: so, things kind of got lost in the ... ok, we will continue on if they approve the sale or it continues another month, I will continue on and we will move on.

Clements: If this is what you want to go for, go for it, ok.

Patzner: Ok.

Guerrettaz: Have we went to the public yet?

Kaczmarczyk: We have not. Is there anyone in the public that wants to speak on behalf of this petition? Anyone that wishes to speak against this petition? Seeing none. Bernie?

SUPPORTERS – 1908-VAR-45 & 1908-VAR-46 – Cornwell & Patzner: None

FURTHER SUPPORTERS – 1908-VAR-45 & 1908-VAR-46 – Cornwell & Patzner: None

REMONSTRATORS – 1908-VAR-45 & 1908-VAR-46 – Cornwell & Patzner: None

ADDITIONAL QUESTIONS FOR STAFF –

1908-VAR-45 & 1908-VAR-46 – Cornwell & Patzner: None

FURTHER QUESTIONS FOR STAFF –

1908-VAR-45 & 1908-VAR-46 – Cornwell & Patzner

Guerrettaz: **In the matter of case number 1908-VAR-45 and 1908-VAR-46, I move that we continue the petitions to an agenda that works consistent with staff's needs on getting the information that they can compile a report that will define and answer some of the questions that they have got.**

Clements: I **second** the motion.

Wilson: I am going to combine these two. The vote is to continue both 1908-VAR-45 and 1908-VAR-46, Cornwell and Patzner Front Setback and Parking Setbacks, respectively, to continue generally until additional information is received. A vote in favor is a vote to grant both continuances. Bernie Guerrettaz?

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Guerrettaz: Yes.

Wilson: Mary Beth Kaczmarczyk?

Kaczmarczyk: Yes.

Wilson: Margaret Clements?

Clements: Yes.

Wilson: Both cases are continued by a 3 to 0 vote.

Guerrettaz: Anne, can you make sure that if the petitioner understands that if he just decides to let it drop, that he can do that.

Crecelius: Yes, I will make sure. I will try to illustrate that a little now.

The motion in cases 1908-VAR-45, Cornwell and Patzner Front Setback Variance to Chapter 804, and 1908-VAR-46, Cornwell and Patzner Parking Setback Variance to Chapter 806, in favor of continuing both cases generally, carried unanimously (3-0).

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NEW BUSINESS

10. 1908-VAR-47 Short Minimum Lot Size Variance to Chapter 804

One (1) 0.679 +/- acre parcel in Clear Creek Township, Section 16 at 1285 E Zinnia DR. **Zoned ER.**

BOARD ACTION: Kaczmarczyk introduced the petition.

STAFF ACTION:

Myers: Thank you. This one is a design standard variance from Chapter 804 for Minimum Lot Size. The petitioner is Charles Short. A bit of summary here. The petitioner requests the design standards variance from the Minimum Lot Size standard of the Estate Residential zoning district. The minimum lot size in Estate Residential zoning district is 1 acre. The petition parcel measures 0.679 acres by survey. The property is located in Lakewood Hills Subdivision which includes several other parcels less than one acre of the minimum requirement. At the time of the plat recording the zoning was Residential 1, also requiring 1 acre and the Plan Commission allowed subdivisions to create lot sizes smaller than the minimum lot sizes required at that time. Had the petitioner not amended the property boundary between this lot and 1269 East Zinnia Drive, which was required to remedy an encroachment on the home on that lot, they would require a Minimum Lot Size Variance per Chapter 804. Once the lot measurement was amended it required a Minimum Lot Size Variance for any future development and that is why we are here today. The lot size at that time increased from 0.47 acres to 0.679 acres, that current acreage and the amendment was necessary as there was an encroachment of a home on 1269 East Zinnia Drive. That original plat amendment included dissolving one lot of the parcel into this parcel and a parcel to the north. The amendment made it so these lots are no longer pre-existing and therefore cannot qualify for administrative relief of the Minimum Lot Size. Here is the location map. The parcel under this petition is at 1285 East Zinnia Drive. It is in a platted subdivision and that subdivision is the Lakewood Hills Subdivision. The existing home on the site was built in 2016 and was constructed within the front yard setback. The petitioner seeks a Minimum Lot Size Variance to construct a detached garage. If the garage were attached the petitioner would also need a front setback variance for the existing home but since it is detached, they only need the Minimum Lot Size. The current zoning is Estate Residential and some of the surrounding zones are Estate Residential and some are Suburban Residential and we have a PUD to the southeast. Here are some site conditions of the property. The slopes are fairly flat as indicated here on the slope map. There has been some drainage concerns brought up by neighbors regarding this petition site and I am going to give out this letter that I have here from one of the neighbors to you guys that we received this afternoon, or this morning I should say, excuse me.

Clements: Thank you so much, Drew.

Myers: Here is a parcel size map that is showing all of the other parcels that are less than 1 acre size in the area. You can see the petition site in the bottom right hand corner. So, there are many other lots in the area that are less than this minimum lot size requirement.

Guerrettaz: Can you say that again, Drew? Can you repeat that?

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Myers: Sure. The green here is all parcels that are less than 1 acre, so it is just kind of showing you that a lot of the other properties in the area don't meet the minimum lot size that is required by the zoning district.

Guerrettaz: And the subject parcel is in the southeast corner?

Myers: Yes, you can kind of see it. It is highlighted in red and it has that pie shape to it. It's in that bottom right hand corner. The Comprehensive Plan designates this property as Rural Residential and here we have some site photos of the property. That top left photo is a current view of the home and the proposed location of the detached garage. The home is in the background there off to the right. The top right photo is of the home again that is located in the front yard setback and then that bottom photo is a view looking north from the opposite side of the street. Here we have aerial photography of the property. It is the most recent aerial photography that we have. Other pictometry that was a little more clear in resolution did not have the home yet visible on the property since it is fairly new constructed. Overall, staff recommends approval of the design standards variance to Chapter 804 for Minimum Lot Size, based on the findings of fact and also subject to the condition that the petitioner hire a surveyor to stake out the exact location of the detached garage in order to receive a Building Permit for that garage. I will now take any questions.

RECOMMENDED MOTION:

Approve the Design Standards Variance to the Minimum Lot Size standard in Chapter 804 of the Monroe County Zoning Ordinance based on the findings of fact and subject to the following condition:

1. Petitioner hire a surveyor to stake out the exact location of the detached garage in order to receive a building permit.

FINDINGS OF FACT: Minimum Lot Size 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 minimum lot size variance would allow the petitioner to do further development on the lot;
- The parcel has a 2569 sf home on the lot built in 2016. The home is located in the front setback currently;
- The petition site is zoned Estate Residential (ER) and requires a minimum lot size of 1 acre;
- There is no evidence that the building site is located on sensitive lands;
- The property is not located in the Environmental Constraint Overlay (ECO);
- There is no known karst on the property;

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- There is no evidence that the building would obstruct a natural or scenic view;
- 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 A (1);
- Approval of the variance allows for the petitioner to do further development on this lot;
- The proposed detached garage would be required to meet all design standards, including 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 A(1) and A(2);
- The lot size presently is 0.679 acres, which is 0.321 acres below the minimum lot size for the ER zoning district;
- The parcels in the Lakewood Hills Subdivision was originally zoned Residential 1. The current zoning is Estate Residential (ER) which requires a 1 acre minimum. Both zones require 1 acre, however ER does not have an additional administrative relief which grants smaller side setbacks for substandard sized lots;
- Surrounding parcels are under 1 acre;
- When the petitioner did a plat amendment in 2017 to fix a lot line encroachment, they increased the lot size from 0.47 acres to 0.679 acres;
- Approval of the minimum lot size variance would not increase density as there is already an existing home on the lot;
- 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 A (1);
- Nearby uses are primarily residential;
- Property value tends to be subjective as it is difficult to anticipate adverse effects;
- 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 A (1);
- There is not floodplain on site;
- The site is not located within an Environmental Constraints Overlay Area.
- Conclusion: It would not promote conditions (on-site or off-site) 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:

- See findings under (A)(1);
- The strict application of the ordinance would not allow the petitioner to further develop their lot;

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

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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 – 1908-VAR-47 – Short

Kaczmarczyk: Any questions for staff?

Clements: I just have comment that Terry Quillman, the drainage coordinator that he has submitted that he would review the drainage plan should we approve it and that is correct, right?

Myers: If you condition that I think that that would be acceptable.

Clements: Ok.

Kaczmarczyk: Any further questions for staff? Is the petitioner here? Would you like to speak, sir?

PETITIONER/PETITIONER'S REPRESENTATIVE – 1908-VAR-47 - Short

Kaczmarczyk: Please sign in.

Short: My name is Chuck Short.

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

Short: I do.

Kaczmarczyk: Thank you sir.

Short: And my name is still Chuck Short and actually I don't really have anything much to add other than the fact that like he said when we changed the size it made me have to come here. But when I changed the size I increased it so I would hope that, originally I thought about putting in a shed, because most others have a shed. But other than do that I would like to put a more permanent and substantial structure because my son-in-law, daughter and two grandchildren live there at this residence. For a living they do landscaping so I would like to be able to have a garage where they can keep their equipment secure. That is basically what I am doing there.

Kaczmarczyk: Any questions for the petitioner?

Clements: I have none.

Kaczmarczyk: Thank you sir. Anyone else here wish to speak on behalf of this petition? Seeing none. Anyone here who wishes to speak against this petition? Step up, sir.

SUPPORTERS – 1908-VAR-47 – Short: None

FURTHER SUPPORTERS – 1908-VAR-47 – Short: None

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REMONSTRATORS – 1908-VAR-47 – Short

Kaczmarczyk: Please sign in, sir. Please state your name.

Rousey: Michael Rousey.

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

Rousey: Yes, ma'am.

Kaczmarczyk: Thank you, Mr. Rousey.

Rousey: I am the property owner north of the location there at 1269 North Zinnia. I believe you have what I submitted to the planning gentleman here. I will let it speak for itself but we just have a couple of concerns. It is not our wish to block anybody's desire to improve their home. However there are a couple of things, particularly drainage and what in the world is actually going to be used in that garage is actually a concern of ours. You know, we do have a quiet neighborhood. We don't necessarily what a landscaping business being run out of there and we have seen some evidence where things are always parked there. I am really concerned about the road where it goes like this and things always parked there where people come around that corner typically faster than they should. My children live there. There are children across the road from me and his own grandchildren. There are people that are living there as a residential area not necessarily as a business and I am concerned about that along with the drainage problems, which by the way I did note on my report with pictures. I might clarify the earlier 2017 photo is just a representation of how that flow comes through there. In 2019 of June is the second photo has improved but I am concerned with more building there that there is going to be concerns there with more drainage. So that is why I raised concerns for this variance at this time. Actually, the same thing is in my hand that you have there.

Kaczmarczyk: Does anyone have any questions for Mr. Rousey?

Clements: I don't.

Kaczmarczyk: Thank you, sir.

Rousey: Thank you.

Kaczmarczyk: Anyone else like to speak against the petition? State your name, sir.

Rank: Robert Rank.

Kaczmarczyk: You wanna sign in for us, Robert?

Rank: Yes, I have signed it.

Kaczmarczyk: Oh, ok. I am sorry. Did I swear you in earlier? Did I swear you in earlier?

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Clements: No.

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

Rank: Yes.

Kaczmarczyk: Ok, thank you.

Rank: I apologize my hearing has really diminished.

Kaczmarczyk: I understand sir.

Clements: It's the same for us.

Rank: My understanding is this request is for a 25' by 25' garage, a residential garage and perhaps as Mike may have elaborated a moment ago, I have some concerns about the proposal. One being that the proposal stick to the size requested and also that the use of that garage be residential. In other words, not set up for storage or materials and equipment for landscaping, home constructions, this sort of thing. I don't really want to see an influxes of parked bulldozers, frontend loaders, caterpillars, dump trucks, trailers, and this kind of thing. The neighborhood, I have lived in my location, by the way I am just behind the proposed location on the east side. It has been residential forever and it's not equipped to handle traffic and the like and it's geared for people who have built up equity in their homes and would like to maintain it. So, those are my concerns with it. I would just like to see the plan adhered to as the county has established before and the residential requirement be maintained. Thank you.

Kaczmarczyk: Thank you sir.

ADDITIONAL QUESTIONS FOR STAFF – 1908-VAR-47 - Short

Clements: So, I would like to ask the staff here a question. It appears as though a lot of the lots around that curve and that have been plotted out have yet to be developed, so this particular lot on which the garage is proposed is it adjoining a lot where the house is or is the house on that lot? Because I can't see the house on the lot.

Myers: There already is a house on the lot and that house was built in the front setback and there was a parcel in between the 1285 East Zinnia Drive and 1269, which is to the north. There was a smaller parcel between those two that was absorbed and split. Both of those parcels grew in size and that happened before. Now since that size has grown a little bit there has been a little bit more space there for the petition site that has house and they want to build a detached garage with the extra space that they acquired.

Clements: Ok, I see. It's just a little bit confusing because the pictures have didn't dates and a little bit of stretching.

Guerrettaz: Again, which side of the home is the garage proposed?

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Myers: The garage is proposed on the north side of the house, so this top left photo you can see the house in the back right corner. Another picture the one to the top right, you can see the house in the background and the garage would be placed in the foreground there.

Guerrettaz: Ok, is it on, so, go back to the aerial. So, is the garage proposed on the east side or the northwest side?

Myers: The northwest side.

Guerrettaz: The use of the garage, I mean if the petitioner comes in and he's defining what he wants to build there and if they do something there that is contrary to the ordinance then that is an enforcement action. Is that correct? I mean, we are not approving anything than just the minimum lot size standard.

Wilson: This is a Minimum Lot Size Variance. An accessory garage would be limited to residential uses although we do allow home based businesses to operate out of accessory structures in most zoning districts.

Guerrettaz: And the question before us is the Minimum Lot Size Variance in order to build a legal.

Wilson: Any construction on the lot needs a Minimum Lot Size Variance. Any expansion of the home would need a front yard variance because it is in the front yard setback. Since this is not attached to the house the only thing required at this point would be a Minimum Lot Size Variance.

Guerrettaz: Ok, thanks.

Clements: I just have a general observation and its consistent with a lot of issues that somehow or another I have become aware of through the city and the county and that's just drainage, you know, and I see a lot of trees have been removed and I see that neighbors are showing pictures of drainage issues. I saw Mr. Quillman's statement that should we approve this, it would be according to him it would be wise to approve it subject to his inspection, involvement and approval. I think that that is wise given kind of the significant change in the area with the removal of trees because drainage is an issue for ensuring the property value of the community not just this one house but that is all. I don't have, as far as operating a personal business outside of the home, I think that as long as it can be contained in an accessory structure and it isn't bothering other neighbors through nuisance and noise and unattractive activity like excessive storage of vehicles outside of the accessory structure that that is permitted. Am I correct?

Myers: Yes, in saying that a home based business if it were to be granted for an accessory structure, most of the time it has to be within that accessory structure. Through the process of getting a Home Based Business Permit we usually go through another process called a Use Determination where the petitioner writes down all of the required information in as much detail as possible about their intention for the accessory structure and the home based business and that gets reviewed by our Planning Director, Larry and it goes through a couple of other reviews. If something were to say they were to petition for a use that would require additional parking or something like that, they may be required to submit a commercial site plan and they would need a full review of a

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commercial site plan.

Clements: So, if they operate a business that is contained, you know, the remnants of it and the obviousness of it is contained within that accessory structure that is fine. But if their business grows beyond their wildest dreams they would have to seek other exceptions or move the business. Correct?

Myers: Yes.

Clements: Ok, I think that is it for my questions.

Kaczmarczyk: Any questions, Bernie?

Myers: Just to clarify too, there are a lot more steps that go into getting a Home Occupation or Home Based Business Permit that requires additional planning review. Granting this variance for a garage there would probably be more review if they were to say that the primary use of the garage would be for a business. They would have to go back through planning review to make sure that everything is accounted for even if that use would be permitted in that zone.

Clement: Mr. Short did say that his son-in-law was intending to use it for storing his landscape business.

Kaczmarczyk: He did state he was using it for the business.

Short: Just to clarify, my son-in-law has a place for his business already, a very big space, at the old pointer building out on 37. This is not for a home based business. I misspoke from that but they would want to be able to store things, a lawnmower occasionally and some of the things that he does have and I would want it to be secure because those things do cost money. There wouldn't be any bulldozers or backhoes or whatever they were talking about. We are talking about lawnmowers.

Clements: You are talking about just convenience because if he has a lawnmower in the back of his truck, he doesn't want to drive it back to his business.

Short: Correct.

Clements: Ok.

Short: Mostly it's just for the same reason anybody would have an extra storage garage. It's not a home based business.

Clements: Ok, that is very helpful to clarify.

Wilson: Can you clarify, are there covenants and restrictions in this subdivision, restrictive covenants?

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Short: There are, yes.

Wilson: Do you know whether they prohibit a business?

Short: I can't speak to that?

Wilson: Ok.

Clements: But he is not having a business he said. He is not having a business. Oh, you have the covenants and restrictions?

Kaczmarczyk: Mr. Rousey.

Clements: Mr. Rousey, yes.

Kaczmarczyk: Do you have a copy of them?

Clements: Do you want to look at them Mr. Wilson? Because you are probably quick to identify.

Wilson: That might alleviate some of the concerns because those are enforceable by a neighbor.

Clements: But never the less Mr. Short has...

Wilson: Yes, there is a restriction that says no lot shall be used except for residential purposes. So, again that is not something that the Planning Department enforces but any owner in that neighborhood could enforce that covenant and restriction.

Clements: Yes.

Kaczmarczyk: That is for them to take to their HOA.

FURTHER QUESTIONS FOR STAFF – 1908-VAR-47 - Short

Clements: He said it would not be for the business. I think that if we are just approving a garage and I don't exactly, I am not so efficient at making the motion but I think that based upon the recommendation by staff that we approve it with the ...

Guerrettaz: Are you making a motion?

Clements: Ok, I will make the motion.

Guerrettaz: I can make it.

Clements: I will try. Its good practice. With regards to **case number 1908-VAR-47, I recommend that we approve the Design Standards Variance to the Minimum Lot Size Standard in Chapter 804 of the Monroe County Zoning Ordinance, with the following conditions;**

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- 1) **The petitioner hire a surveyor to stake out the exact location of the detached garage in order to receive a Building Permit.**
- 2) **That it is subject to the approval of the MS4 Drainage Coordinator and Supervisor and his inspection and instructions.**

Other than that I recommend approval.

Guerrettaz: **Friendly amendment?**

Clements: **Yes.**

Guerrettaz: I would also add along with your **Condition #1 that as a part of the Building Permit exhibit that a licensed professional Land Surveyor prepare that exhibit**, so that staff knows on paper before its staked exactly where that detached garage is going to fall on the property. That will help coordinate any drainage questions that the MS4 Operator may have in order to see on a scaled drawing where those improvements, that is not something normally that I would require. But staff has got it and I think it's a good idea and since we are talking about a lot size standard variance I think that all of these are important.

Clements: I appreciate that friendly amendment.

Guerrettaz: Thank you. I **second** it.

Wilson: The motion is on petition 1908-VAR-47, Short Minimum Lot Size Variance. The motion was to approve based upon the findings and with the conditions in the staff report and set forth in the motion. Again a motion in favor is a motion to approve with the conditions. Mary Beth Kaczmarczyk?

Kaczmarczyk: Yes.

Wilson: Margaret Clements?

Clements: Yes.

Wilson: Bernie Guerrettaz?

Guerrettaz: Yes.

Wilson: The motion carries 3 to 0 and the motion is approved for minimum lot size.

The motion in case 1908-VAR-47, Short Minimum Lot Size Variance to Chapter 804, in favor of approval of the variance with the conditions attached to the motion, as set forth in the motion, carried unanimously (3-0).

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REPORTS:

Planning/Wilson: No report

Legal/Schilling: No report

The meeting adjourned at 7:04 P.M.

Sign:

Attest:

Mary Beth Kacmarczyk, Chairman

Larry J. Wilson, Secretary

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