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**BOARD OF ZONING APPEALS
Regular Meeting Minutes
November 6, 2019 - 5:30 p.m.**

CALL TO ORDER

ROLL CALL

INTRODUCTION OF EVIDENCE

APPROVAL OF AGENDA

APPROVAL OF MINUTES

October 2, 2019

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

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

ABSENT: *Michael McNeil, Mark Kruzan*

STAFF PRESENT: Larry Wilson, Director, Tammy Behrman, Senior Planner, Anne Crecelius, 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 October 2, 2019 carried unanimously.

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ADMINISTRATIVE BUSINESS:

1. Election of Chairman and Vice Chairman

OLD BUSINESS:

- 1. 1908-VAR-45 Cornwell and Patzner Front Setback Variance to Chapter 804**
- 2. 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.**

NEW BUSINESS:

- 1. 1909-VAR-53 RTG Limited Partnership Side Yard Setback Variance to Chapter 804**
One (1) 40.0 +/- acre parcel in Van Buren Township, Section 27 at 6535 W Ison RD. **Zoned AG/RR.**
- 2. 1909-VAR-54 Mercer Buildable Area Variance to Chapter 804**
One (1) 32.2 +/- acre parcel in Clear Creek Township, Section 31 at 9595 S Bennett Lane. **Zoned AG/RR.**
****WITHDRAWN****
- 3. 1910-VAR-55 James Minimum Lot Size Variance to Chapter 804**
- 4. 1910-VAR-56 James DADU Minimum Lot Size Variance to Chapter 802**
One (1) 2.04 +/- acre parcel in Van Buren Township, Section 25 at 3473 W Cockrell RD. **Zoned AG/RR.**
- 5. 1910-VAR-57 Lash Minimum Lot Size Variance to Chapter 804 & 833**
One (1) 1.56 +/- acre parcel in Van Buren Township, Section 11 & 14 at 4505 W State Road 45. **Zoned RE2.5 & AG/RR.**
- 6. 1910-VAR-58 Douglas Minimum Lot Size Variance to Chapter 804**
- 7. 1910-VAR-59 Douglas Minimum Lot Width Variance to Chapter 804**
One (1) 1.4 +/- acre parcel in Perry Township, Section 23 at 3800 E Moores Creek RD. **Zoned AG/RR.**

REPORTS:

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

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ADMINISTRATIVE BUSINESS:

1. Election of Chairman and Vice Chairman

Guerrettaz: **I move that Mary remain as Chair and that Margaret be Vice Chair.**

Clements: And we approve this.

Guerrettaz: Yes, we can.

Kaczmarczyk: Larry, can we?

Wilson: Yes, you can approve it. We have a quorum so you can take any action.

Guerrettaz: Do I need a second to that motion?

Clements: I will **second**. Thank you Bernie. Thank you for your faith.

Wilson: You will need to make this by acclamation or it won't count.

Kaczmarczyk: We have to what?

Wilson: All 3 of you have to vote for it.

Kaczmarczyk: Ok. All in favor?

Clements: Aye.

Guerrettaz: Aye.

Kaczmarczyk: Aye.

Wilson: We will note the election on the record.

The motion to elect Mary Beth Kaczmarczyk as Chair and Margaret Clements as Vice Chair, carried unanimously (3-0).

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OLD BUSINESS

1. **1908-VAR-45** **Cornwell and Patzner Front Setback Variance to Chapter 804**
2. **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: Good evening, guys. We have heard this case before. This is for design standards variances 1908-VAR-45 and 1908-VAR-46 for Cornwell and Patzner. 1908-VAR-45 is a design standard variance from Chapter 804 for the Front Setback and 1908-VAR-46 is a design standards variance from Chapter 806 a Parking Setback. This is approximately 1 acre parcel located at 5450 South Old State Road 37. It is located in Perry Township, Section 28. We previously heard this case at the August Board of Zoning Appeals Meeting. The petitioners are requesting these 2 variances in order to build a commercial building for General Contractor use. They had requested a 25' foot setback from the right of way, where the minimum building setback from Chapter 804 is 50' and a parking setback of 0' from the right of way, where the minimum setback for parking from the right of way is normally 10' feet. These variances were requested in order to accommodate a riparian setback from a stream/drainage located in the middle of the property, or the western edge of the main parcel. The exact riparian setback was unknown and it did require a survey which is why it was continued. The petitioner used Deckard Land Surveying. You should have those submittals in front of you. There is a mockup site plan included. Here we go. The MS4 Operator from the Highway Department had requested to see the 100 year floodplain expansion of that drainage area. They wanted to know what kind of specs exactly might be required for a commercial building on this lot. So, that is delineated in a hot pink line on the survey. The survey on the screen is a cropped image of that official survey. Included is the proposed location of the building with that 25' requested setback from right of way and the 0' setback for parking from the right of way. I know that we have heard this before, so I will keep this brief. Does anybody have any questions? I did skim over this. Staff does recommend approval based on this newly submitted information.

RECOMMENDED MOTION:

Staff recommends approval, based on the newly submitted information.

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:

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- 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:

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- 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);

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- 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.

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

Kaczmarczyk: Any questions for staff?

Guerrettaz: The parcel line between the east parcel and the west parcel that will remain. I mean there is no reason why that parcel would be just one zoning lot or how is that going to be treated?

Crecelius: I will have to double check. I was under the impression from the original information of pre-design and the report it was only the parcel on the right. But after working with Erik Deckard it turns out the petitioner is also interested in buying that second parcel, so I will clarify to make sure that is one lot of record or at least that it is combined for planning and zoning purposes.

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Guerrettaz: The reason why I am asking is I want to make sure that if we give the front setback or the variances that we know specifically which one it is going to be since there is 2 parcels.

Crecelius: It would be from the right of way.

Kaczmarczyk: Any further questions for staff? Seeing none. Would the petitioner like to speak? Come on up and sign in and state your name for us.

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

Patzner: Hi, I am Neil Patzner.

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

Patzner: I do.

Kaczmarczyk: Thank you, sir.

Patzner: After a couple of months of going back with the survey, that hot pink line can actually shrink if the culvert is increased from a 24 inch to a 40 inch. Because the rise of water would actually be seceded but for what we are doing right now we are actually at the minimum right now as the property sits. Both lots are in the purchase agreement but for right now I am not worried about Lot 2. I am just worried about the one that is closest to the road.

Guerrettaz: So, the petition site is still just the east parcel?

Crecelius: Correct.

Guerrettaz: Ok.

Kaczmarczyk: Any questions for the petitioner? Ok. Thank you sir.

Patzner: Thank you.

Kaczmarczyk: Is anyone here to speak on behalf of the petitioner? Seeing none. Anyone here wish to speak against the petition? Seeing none. Ready for a motion.

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**

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

Clements: Go ahead. I have to practice, Bernie.

Guerrettaz: Go ahead.

Clements: **In the matter of petition 1908-VAR-45 and 1908-VAR-46, I recommend that we approve the request for Front Setback and Parking Setback, as per the findings of fact.**

Guerrettaz: **I second.**

Kaczmarczyk: Call the roll, please, Larry.

Wilson: The vote is on petitions 1908-VAR-45, Cornwell Patzner Front Setback together with petition 1908-VAR-46, Cornwell Patzner Parking Setback. A vote in favor is a vote to approve both variances based upon the finding. 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-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 approving the variances, carried unanimously (3-0).

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NEW BUSINESS

1. 1909-VAR-53 RTG Limited Partnership Side Yard Setback Variance to Chapter 804

One (1) 40.0 +/- acre parcel in Van Buren Township, Section 27 at 6535 W Ison RD. **Zoned AG/RR.**

BOARD ACTION: Kaczmarczyk introduced the petition.

STAFF ACTION:

Behrman: This is RTG Limited Partnership. It is located at 6535 West Ison Road. It is accessed by a long, 15' foot driveway. The site is zoned Agricultural/Rural Reserve. It is a 40 acre parcel and it is adjacent to the Iron Gate Farms Subdivision, Phase 1. That will be mentioned later on. The Comprehensive Plan designates this as Rural Residential. This is the general site conditions. It is 40 acres. It is a mix of ag land, forested, sloped areas. There is one existing residence, kind of in the center of the lot and then in the north east corner of the lot there is quite a bit of structures and activity and we will get into the specifics of it in a minute. This is the slope map for the area. You can see the red area are slopes greater than 15 percent, which is not considered buildable, where we would not put structures normally. This is more detailed area of that north east corner. What you see here is a 3,500 square foot pole barn that recently got a retroactive permit, a barn and a shed and then what the proposal is to right within this area is to incorporate a structure that is 60' by 200' feet , so that is a 12,000 square foot structure. This site did a Use Determination Form back in March and it was determined that there is a grandfathered General Contractor use on the site. They do a lot of asphalt and paving. They also have agricultural on the site. They have livestock and pasture. They have these structures to kind of maintain that equipment and then we also during staff visit discovered a second residence, which is going to be enforced upon and will have to get permits, likely some variances as well. At this point and time, what they are here asking for is a Side Yard Setback Variance for this new 12,000 square foot structure. A non-residential side yard setback is 50' feet and because of its use for contractor work and agricultural work, we can't consider it a residential structure, which would normally need 15' foot setback. But in this case we need a 50' foot setback from the side yard and in this case they are asking to be 10' feet off of the line. So, there are reasons why they would like to place it here. This is generally where all of the activity is taking place. Its proximity to this heated pole barn where they do the maintenance on equipment and the way that those bay doors are situated on this existing pole barn, what they would like is to maintain a 50' foot distance between the heated pole barn and then this new structure to allow for access through those bay doors. That is why they are kind of shoving it closer to the side yard, to that side property line. Some things to note in this picture, the Iron Gate Farms Subdivision right there to the east and there is an interesting 50' foot strip before you then get to a 50' foot right of way. So, in the picture to the left I tried to depict this. We have Lot 20 that was in this subdivision and it has this very long, stringing looking flagpole that services nothing really. It is just this long line that was kind of a buffer and then from there you have this 50' foot right of way for Iron Gate Trail. Then you see there is the first residence there to the east. That is probably the closest neighbor and I do believe there are two more lots that haven't developed yet that could potentially put a home nearby. But I wanted to point out this 50' foot strip because we do kind of have a buffer that could not be built upon. We would not consider that strip buildable area simply because no structure could meet setbacks right there. Moving onto some of the site photos. On the upper left the left drive is for Iron Gate Trail Subdivision and then the right

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hand is to the petition site. On the upper right we have another photo of the petitioner's driveway and then on the bottom it is right when you are entering that busy northeast corner site with the structures and equipment that I have there. The upper left is that existing 3,500' square foot pole barn with the bay doors that they would like to maintain access to and still keep that building in close proximity that will be used to store ag equipment and hay. The bottom picture is just another view of that area where they would like to locate the 12,000 square foot structure. The upper picture is depicting the very far eastern lot line facing south. So, this is again where some of that building will be going and then another view of it on the bottom picture there. The top left that is the petitioner's home site with the adjacent agricultural field, just sort of depicting the residential character on the center part of the lot and yet we have this nice, flat ag area right next to it. The upper right picture is a view while driving down the Iron Gate Trail in that subdivision to the east and if you blow that picture up if you have it online you can see the equipment from the petition site through that tree line and leaf on conditions. So, I am really not sure what it looks like. I could probably go our right now and see what it looks like with leaf off conditions. The bottom picture is taken from that driveway of the closest neighbor and you kind of just see right through that tree line and see that there is equipment. They may even hear the activity, the beeping of any emergency backup vehicles, that kind of thing. Again, this is a grandfathered business that has been there pre 1997. So, it is a grandfathered thing. It is not something we would probably permit today without going through some hoops. I have included a couple pictometry view photos. The bottom right is probably the most clear area where we kind of hone in on that spot and you can see that buffer strip of 50' feet from that Lot 20 in the subdivision and then also the adjacent neighbors nearby. The petitioner's letter is included in the packet as well as their site plan. The site plan is only just that northeast corner that they focused in on showing that 60' by 200' structure and I think I didn't mention it but that structure was originally purchased by Monroe County Solid Waste District. It was never put up on their land and then the petitioner had purchased it with the thought of cleaning the site, put a lot of the equipment indoors, kind of buffering the neighbors with the structure. In this petition staff recommends denial of the Side Yard Setback requirement to Chapter 804, based on the findings of fact, particularly Finding C. When we looked at all of the findings, everything else seems to make sense to put that structure where it is, however they do have area in that 40 acres that meets buildable area criteria and would meet all of the setback requirements. That is simply why we have to recommend denial in this case because there are other places they could locate the building that meet all buildable area criteria.

RECOMMENDED MOTION:

Staff recommends **denial** of the side yard setback requirement to Chapter 804 based on the findings of fact particularly Finding C.

FINDINGS OF FACT: Side Yard Setback 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 12,000 sf agriculture structure to be constructed 10' off the eastern property line;
- There are no visible karst features on the site or FEMA floodplain;
- There are no designated natural or 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 property has ingress/egress by way of a 15' wide easement that runs approximately 1250' to connect with W Ison Road, a local road;
- Allowing the agricultural building in its proposed location will have no foreseeable impact on utilities;
- There will be a 50' distance between an existing pole barn and the proposed ag building in the proposed location to allow for equipment maneuvering;
- The home is 600' to the south and utilizes a septic system;
- The second home is currently unpermitted and will be required to meet all permit requirements;
- The subdivision to the east has drainage infrastructure already in place for the 50' right of way stub between Lot 3 and Lot 20;
- **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 side setback for non-residential structures is 50';
- The agricultural building is proposed to be 10' from the eastern property line;
- The use of the property is general contractor, agricultural and residential (all grandfathered);
- Equipment and vehicles can be stored in any yard;
- Equipment and vehicles are currently visible through the tree line from neighboring properties as shown in staff photos numbered 9 & 10;

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- The adjacent Iron Gate Farms Subdivision was platted in 2006;
- The surrounding areas are residential and/or agricultural;
- The Comprehensive Plan designates this area as Rural Residential;
- The agricultural structure meets all other design standards;
- **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 side yard setback requirement of 50' for non-residential structures is to preserve the general character of zoning district and provide a buffer between adjacent property owners for more intense use (agricultural and in this case grandfathered general contractor use) of the building;
- The platted Lot 20 of the Iron Gate Farms Subdivision creates a 50' strip between the petition site and the platted 50' S Iron Gate Trail right of way;
- The 50' strip of Lot 20 is not considered Buildable Area;
- The building was purchased from the County in a pre-fabricated 60' x 200' dimension;
- **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), A(3), and B(1);
- The agricultural building does not interfere with any easements or utilities;
- **Conclusion:** There are no foreseeable detrimental conditions to the use and enjoyment of other properties that would result from maintaining the current location of agricultural building.

(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:

- There are other locations on the 40 acre petition site that could accommodate the 60' x 200' structure which would meet the side setback requirement for non-residential structures in the zoning district (AG/RR) and meet all other buildable area requirements;
- Petitioner has applied for one variance, which is the minimum necessary in order to obtain an Improvement Location Permit waiver for the agricultural building in its proposed 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 – 1909-VAR-53 – RTG

Kaczmarczyk: Any questions for staff? Would the petitioner like to speak?

PETITIONER/PETITIONER'S REPRESENTATIVE – 1909-VAR-53 – RTG

Carmin: Good evening. I am Mike Carmin representing the petitioner. The petitioner name that you heard is RTG Limited Partnership that is Richard and Teresa Groomer. Mr. and Mrs. Groomer are here also. I think Bernie, thank you Bernie, passed down a couple papers. When you come to these and staff findings aren't adequate to allow you to approve the variance I try to provide findings to make things a little bit easier for you. As Tammy mentioned it really comes down to Item C. In your packet it is page 44, the bottom of page 43, I am sorry, the bottom of page 44. I was right the first time, where you will finding criteria C. It is the one in abbreviated form it generally refers to practical difficulties. Something about this property or the continued use of the property that sets it aside from others what would help justify or support a variance. We think there are several things. Just so you know, Tammy has given you some good practical business reasons why they want to locate where they do. There is actually a little bit more than that too. Locating the building where they would propose on the site plan minimizes new construction, at least in the

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sense of roadway clearing. There is virtually no clearing required. It is pretty open, a little scrub stuff but basically it can be done there. It also has the advantage we think, while it has been there forever, a very long time business use out there and it is entitled to continue. It has got quite a number of pieces of equipment and vehicles. You saw some photographs of that. There is a photograph in your packet that even shows a number of pieces of equipment or vehicles kind of line up in the very spot we want to put the building. Creating the building or allow the building to put is to be able move those things inside and reduce the open lot parking or storage, which we think would be an improvement. The building itself would it function? At least a little bit as a sound buffer too for the activity that is occurring on the west side of the building because the opening would be to the west not to the east, so the open would be sheltered from the neighborhood across, Iron Gate Trail, which is off to the east. From the criteria standpoint it comes down to what are the practical difficulties. Every other site on the property will require at least widening the driveway if not a brand new driveway. Some of them would require tree cutting, at least somewhat. Some quite a bit of tree cutting depending on other site would be chosen. There is no direct access from any site on the property to the west, the east property line is Iron Gate Trail. We referred to the 50' foot strip there. There is no easement and there really shouldn't be because if you look at that it appears the developer for that subdivision took advantage of that to put their drainage swale down through that. That space between Iron Gate Trail and the Groomer east property line is really serving as part of the drainage system from that subdivision and that development to the east. There is a culvert that brings it under Iron Gate Trail, bring it into that and that serves as a drainage swale coming down just outside of the right of way. So, we do not want to disturb that. We shouldn't be trying to put a driveway through there even if we could get permission to do so because we have not easement at this time. When we are looking at practical difficulties there are some certain advantages and pluses to putting the building where it's requested. There are the practical difficulties of the need to widen the driveway that leads to the house and then take another driveway off that it to this building and the grading all of which can be avoid. It becomes unnecessary we locate the building where it is desired in the northeast corner. If you look at we have this unusual circumstance and that is one of the criteria I think you look at is what is something about this property. The unusual circumstance is I think that you have is this 50' foot strip along the side. If you look at Lot 20, you see it there in blue, and this runs up, with that strip in hand that makes that a 5 acre lot, which is you know, 5 acres is the magic number in lot size n trying to preserve a lot with 5 acres. So, what the developer was able to do was to create a 5 acre lot and double dip on the use of part of that with this 50' foot strip as part of his drainage system for the development to the east of the trail way. I don't blame him at all for doing it. It is an innovative way to deal with the need to find drainage without wasting land from the developer standpoint and still meet the 5 acre tract for Lot 20 and meet those design requirements. So, what I have passed out to you are proposed findings for the petitioner that would suggest that if you approve these and find these it would support then a finding to approve the variance that would otherwise adopt the findings submitted by staff. In all other matters those findings are fine and they would support the approval of a variance. So, what are the 3 findings that I would suggest to you? The first one actually comes from the staff findings. That is I think a verbatim quote of a finding that has otherwise made as a criteria and that is just a simple statement of truth regarding this 50' strip along the east side. The second proposed finding there is no easement or direct access to the public road along the east side of the property and I have been talking about that there is not. Locating the building on the others areas of the petitioner's lot would require tree removal and I probably should have said at least some tree removal, the amount would vary depending on the

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location, to create the building site would require some tree removal and some grading to create the driveway from the northeast corner. So, the driveway to this building wherever it is positioned is going to have to come from the far northeast corner, all the way to wherever this building goes, which means driveway creation, more grading, more stone, probably not paved as opposed to being able to locate it right there in the corner where the drive already exists. The 3rd finding, the non-buildable area, the 50' foot buffer between these property lines and the road right of way and that would be Iron Gate Trail, I submit is an unusual circumstance. Because what we are doing is a 50' foot setback that in many respects is artificial. As you have been told the proposed building site would be 10' foot off of the line. We have this 50' foot buffer, now we are 60' feet. We have, you see green space before you get to the edge of Iron Gate Trail. I understand the measurement for the west edge of Iron Gate Trail, the paved portion to this building site is 110' feet. So, you add the width of Iron Gate Trail, you add the setbacks on the other side, you have the distance of the structure. You actually have about a 190-200' foot setback from the nearest structure that is going to be built. There will never be anything built in this 50' foot. There will be nothing built between Iron Gate Trail paved portion and this 50' foot. It is just going to be green space. It is not suitable for anything else. It is not big enough to do anything else. So, we have really an artificial issue of a setback because while it is true the property line is there, it is a 50' foot nothing plan except for drainage. Plus the additional land that is the greenspace on the east/west side of Iron Gate Trail, so we have a huge setback and so the issue of a variance from that hug setback to allow this 10' foot of the property line, absolutely does zero harm to anyone. It avoids what we say the unintended consequences of more clearing, grading and road construction on the petitioner's lot takes advantage of existing driveway that is already there, so we minimize any more ground disturbance and gives us a building that we can house the equipment and gets those out of open lot storage. We ask for your support and approval of the variance.

Kaczmarczyk: Thank you. Any questions? Ok. Would anyone else like to speak on behalf of the petition? Would anyone like to speak against the petition?

Wilson: For the record, I do have a question for the record. How tall is this building going to be? It looks like 20' feet to the eaves.

Groomer: I think it is 21.

Wilson: 21 total.

Groomer: Yes. I am not 100 percent on that but that is real close.

Wilson: We didn't have an elevation for the actual roof part. We just had it to the eaves. The second question I have is exactly why it does it have to be exactly across from other building?

Groomer: So, that we can get the use of our building that is there. It is heated and that is where we work on our equipment in the winter time and then if I got the storage of my equipment on the inside of the structure that I am wanting to build I will be able to have excess to go from it because it is not going to be heated or anything of that nature. I am going to keep hay, equipment, just for my farming and my construction so it makes it so I can get my equipment right into that building.

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Wilson: So, it's really for convenience.

Groomer: Yes, I would say more for convenience and just use.

Wilson: Thank you.

Kaczmarczyk: Any other questions? Anyone here wish to speak against the petition? Seeing none. I think we are ready for a motion.

SUPPORTERS – 1909-VAR-53 – RTG: None

FURTHER SUPPORTERS – 1909-VAR-53 – RTG: None

REMONSTRATORS - 1909-VAR-53 – RTG: None

ADDITIONAL QUESTIONS FOR STAFF – 1909-VAR-53 – RTG

Guerrettaz: I have got a couple of questions. I just wanted to see what the public had. What is the status of grandfathering existing, explain that to me again?

Behrman: So, the petitioner filled out a Use Determination Form and it was reviewed by Larry and the rest of staff. It was determined their use is General Contractor plus Agriculture. These were uses that were occurring prior to 1997 so when they actually applied for this permit we do a thorough review when permits are submitted to our department. At that time we found out that 3 other structures did not have permits, so those came up to speed and now do have permits. This is the one they are trying to get done now and now we also have a house that was discovered that we also need to have permitted as well. So, any structure that was not grandfathered has had to get a permit. I don't know if that is all of the grandfathering you were asking about.

Wilson: I think that it was represented that the 12,000 square foot building would be used for agricultural purposes, storage of hay and farm equipment and it is a 40 acre Agriculture site. It is just really a question of the proximity to that boundary line.

Guerrettaz: I mean it is a unique property and a unique setting. The fact that it is a 40 acre parcel and there is a platted subdivision around it with the new roadway, when I first saw it I thought move the building but it does seem to me that it is a practical location and I see more, you know, the convenience of it is one thing but just the efficient use of the property when it is so far away from anything else I am seeing on the drawing, I am kind of leaning thinking that it is probably in order.

Clements: I feel the same way because well, they have thought through this and they have one building there the use of which will be amplified if they build this other building and it will actually improve the general area because they can put some of the equipment that we see now from the roadway inside the structure and protect it from weather. They can make use of the gravel path between two buildings and I mean, what be useful to them would be there, which to me is a strong argument that they themselves think that would be useful and they have been there for a while.

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Kaczmarczyk: You want to make a motion, Bernie?

Behrman: I do have a handout if you are entertaining the thought of approving this petition, with some conditions of approval that staff had thought maybe might be. If you are thinking of approving it staff would maybe like to recommend some conditions.

Guerrettaz: Sure.

Behrman: If you do choose to approve I have 2 slides that I added, which I wasn't going to bring forth unless I felt like there might be a consideration to approve it. What you are reading there is;

- 1) Staff would like to establish protective fencing to preserve the existing trees along the eastern property line during the construction of the 12,000 square foot structure.
- 2) A Building Permit Application and Variance Petition shall be filed for the second 24' by 44' residence that was located on the property in 2018 without permits.
- 3) Staff and the Highway Department Drainage Engineer ask that a license architect or engineer shall submit a detailed footing design for the 12,000 square foot structure and be submitted to the Planning Department prior to the permit release.

So, what we are looking at is the most recent, we discover this right after the staff report was submitted and this is a Google Earth photo that did not get included in your packet. It does show that there is a significant amount of grading work that was performed in that blue circle. The red circle demonstrates where we would like the tree line preserved and make sure that is protected during the construction. The home in the yellow circle is what was discovered during this site visit and that is not meeting front setbacks and it could possibly be classified as an Accessory Dwelling Unit but it would require a variance, possibly. We have not seen a permit come through for that yet, so it will need closer inspection. If you do so choose to recommend approve for this petition, we would like you to consider adding some conditions of approval.

Guerrettaz: So, the trees in the red circle, those aren't owned by the petitioner. Correct? You are just looking at a protective fence to make sure that none of the construction activity get in there.

Behrman: They are wanting to be 10' feet off of the line and we would like to protect as much of that as possible to maintain that vegetation, to maintain a drip line, if you will, for the trees.

Guerrettaz: And then the structure in the yellow, to the west, that structure and would that had to have gone through a variance process?

Behrman: If they had applied for a permit for that we could have told them the setbacks, we could have told them what they needed to apply for and that did not occur. There is kind of a history there of not getting permits.

Guerrettaz: But now that you know that you would require some sort of variance...

Behrman: Either that or they need relocate it.

Guerrettaz: Relocate it or enforcement. One of those 3 things, is that correct?

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Behrman: It is in enforcement right now. It has to come back and get a permit. This is just a way to get them to apply for that and get that going. As far as we know, it does not have Septic Permits. We haven't seen an application come through the department yet.

Guerrettaz: So, if they don't comply with any of these conditions that staff has then the variance we are voting on this evening would not be in effect.

Behrman: Correct.

Guerrettaz: Has the petitioner seen these?

Behrman: No. But we have discussed at length the home and the location and we had just recently discovered the grading that was done. I am not sure if its fill or grading and that is why the Drainage Engineer thought it best if they just have an architect sign off on the footing design to make sure that its stable and support.

Guerrettaz: Because the concern is there could be unconsolidated fill there that they are putting the structure on?

Behrman: Yes, there is no permit for that grade work so we just don't know what occurred there even necessarily what the elevation was prior.

Carmin: If I may, Kevin Potter has already been out and looked at the site, the proposed site to check on those things, about the footing and the foundation and he is ok with this site. Nothing had been started, it is just to look to see if there is going to be any problems there. So, Kevin Potter has already been retained on that issue.

Guerrettaz: Thanks.

FURTHER QUESTIONS FOR STAFF – 1909-VAR-53 – RTG

Guerrettaz: **In the matter of case number 1909-VAR-53, RTG Limited Partnership Design Standards Variance to Chapter 804 for Side Yard Setback at 6355 West Ison Road, based on the petitioner's findings of fact and based on the 3 conditions we have been given by staff;**

- 1) Establish protective fencing to preserve the existing trees along the eastern property line during the construction of the 12,000 square foot structure we are discussing this evening.**
- 2) A Building Permit application and Variance Petition shall be filed for the second 24' by 44' residence that was relocated on the property in 2018.**
- 3) A licensed architect or engineer shall submit a detailed footing design 12,000 square foot structure we are discussing this evening and be submitted to the Planning Department prior to permit release.**

Clements: I **second** the motion.

Kaczmarczyk: Call the roll, please, Larry.

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Wilson: I think you will need to amend the findings to find that, are we going to use Mr. Carmin's?

Guerrettaz: **Yes, based on the petitioner's submitted findings.**

Wilson: Ok, the vote is on petition 1909-VAR-53, RTG Side Yard Setback. A vote to approve is a vote to approve, based upon the findings as submitted by the petitioner and subject to the conditions set forth by the Planning Department in regard to protective fencing in regard to the trees along the construction site, obtaining a Building Permit and any necessary Variances for the 24' by 44' residence placed on the site in 2018 and a sign off by a licensed architect or engineer regarding the suitability of the footings for the site in question. Bernie Guerrettaz?

Guerrettaz: Yes.

Wilson: Mary Beth Kaczmarczyk?

Kaczmarczyk: Yes.

Wilson: Margaret Clements?

Clements: Yes.

Wilson: Ok, the variance is approved subject to the findings and conditions.

The motion in case 1909-VAR-53, RTG Limited Partnership Side Yard Setback Variance to Chapter 804, in favor of approving the variance with the petitioner submitted findings and conditions by staff as set forth in the motion, carried unanimously (3-0).

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NEW BUSINESS

2. 1909-VAR-54

Mercer Buildable Area Variance to Chapter 804

One (1) 32.2 +/- acre parcel in Clear Creek Township, Section 31 at 9595 S Bennett Lane. **Zoned AG/RR.**

BOARD ACTION: Kaczmarczyk introduced the petition.

STAFF ACTION: Petition was withdrawn.

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NEW BUSINESS

3. 1910-VAR-55 James Minimum Lot Size Variance to Chapter 804

4. 1910-VAR-56 James DADU Minimum Lot Size Variance to Chapter 802

One (1) 2.04 +/- acre parcel in Van Buren Township, Section 25 at 3473 W Cockrell RD. **Zoned AG/RR.**

BOARD ACTION: Kaczmarczyk introduced the petition.

STAFF ACTION:

Behrman: Thank you. This one is located at 3473 West Cockrell Road. It is a private drive and then on top of that it is accessed through an easement. It is located in Van Buren Township, Section 25. It is 2.04 acres and is zoned Agricultural/Rural Reserve. As you know, the minimum lot size in Agricultural/Rural Reserve is 2.5 acres. They are shy on basic minimum lot size requirements. The Comprehensive Plan designates this as MCUA Rural Transition and these are the site conditions. You can see the easement and the driveway that kind of border that northern property line. It is mostly wooded. It does have considerable amount of slopes greater than 15 percent. There is currently an existing home on the site that was built, I do not have that date but we do have a permit for it. There is also a Residential Accessory structure that was built in 2004 and permitted as an accessory structure. It has been converted into a residence without a permit, so we are currently at 2 residences on this lot. However, we see that the Residential Accessory structure that they converted meets almost all of the criteria or can meet the criteria to become an Accessory Dwelling Unit on this site, with the exception of Minimum Lot Size. That is a 5 acre requirement to have Accessory Dwelling Unit on the site. Again, they only have 2.04 acres. Looking at the other general area in a quarter square mile, we have just a couple other lots that are less than 2.5 acres that are also zoned Agricultural/Rural Reserve and then we have some more dense neighborhoods to the south that are zoned differently. These are some of the site photos. The upper left is the driveway entrance and that access easement. The bottom picture is mostly the main house that you see coming up the driveway and then to the far right hand side is the accessory structure. The upper picture shows the attached garage to the main home on the left and then the accessory structure on the right and you will note that there is a large staircase that kind of winds its way up there. The petitioner what they are really ultimately wanting to do with this structure, it is already being used as a residence, but they would like to do an accessible ramp to the back end of it, so that the person who lives there does not have to utilize those stairs and then the bottom right picture is the back side of the house. They would like to do an addition and add on a bathroom so that the resident does not have to walk as many steps through their home and just make an accessible bathroom, basically. The upper left picture is the start of where they would be putting that accessible ramp between the home and the accessory structure and then it would curve to the right. That is depicted in the petitioner's site plan, which is in the packet. In this yellow circle is the site plan and you can see how the accessible ramp kind of would wind its way around the back of the Accessory Dwelling Unit. There will be a new entrance there and also then an accessible bathroom which is located closer to the bedroom in the home. The petitioner's letter is included in the packet. Hopefully, you had a chance to read that and then we did have 2 support letters from neighbors in the area that were wanting to support the petition. Staff had originally included a condition of approval to submit a Septic Permit that would accommodate 5 bedrooms and that was actually submitted just the other day. I was able to include it here in this slide. So, this does reflect the 5 bedrooms that the Health Department is signing off on it. In the event of septic failure they

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would have to put in the specified size septic system that would accommodate 4 bedrooms in the main home and the 1 bedroom that is in this converted or soon to be converted officially Accessory Dwelling Unit. The recommended motion is approve the Design Standards Variance to Chapter 802, Condition 53 and 55, from the 5 acre Minimum Lot Size requirement for the Detached Accessory Dwelling Unit, based on findings of fact. Again, there is no condition now because we have already met it and then also approve the Design Standards Variance to Chapter 804 for Minimum Lot Size requirement, based on the findings of fact.

RECOMMENDED MOTIONS

Approve the design standards variance to Chapter 802, Condition #53 & #55 from the 5 acre minimum lot size requirement for a Detached Accessory Dwelling Unit

Approve the design standards variance to Chapter 804 minimum lot size requirement based on the findings of fact

FINDINGS OF FACT:

Petition 1910-VAR-55; A Detached Accessory Dwelling Unit requires a 5 acre lot size.

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 apply for a permit to convert a residential accessory structure into a Detached Accessory Dwelling Unit (DADU) and add 192 sf addition and accessible ramp to the existing structure;
- The site currently contains a 3322 sf single family dwelling with an attached garage, three sheds and the Residential Accessory structure that was converted into a residence;
- The site is adjacent to single family residential uses;
- The residential accessory structure was permitted in 2004 under permit # 04-RA-039;
- The site has no FEMA floodplain on the lot;
- The site is not in a natural or scenic area;
- Conclusion: The approval 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);
- The parcel is addressed off of W Cockrell Drive, a private drive and is accessed by nine other lots on a shared easement commonly referred to as Dogwood Lane;
- There is one septic systems on the property permitting four bedrooms under permit #22071;

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- 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);
- The petition site is zoned Agriculture / Rural Reserve (AG/RR);
- The 2.04 +/- acre parcel is a legal lot of record;
- A DADU is permitted in the AG/RR zone if the property has at least 5 acres;
- The existing structure can meet all other design standards for the conversion to a DADU;
- 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);
- There is no floodplain on site;
- Drainage is to the north;
- The proposed addition is for 192 sf addition and accessible ramp;

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- Conclusion: It would not promote conditions detrimental to the use and enjoyment of other properties in the area

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

Findings:

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

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

Findings:

- The residential accessory structure has been used as a home off and on since 2004 and the current occupant has been living there since 2014;
- If the variance for the 5 acre minimum lot requirement for a DADU is not granted the petitioner would need to decommission the structure as a residence and find an alternative living arrangement for the 92 year old family member;
- One additional variance is required from the minimum lot size design standard of Chapter 804;

FINDINGS OF FACT: Minimum Lot Size Standard 1910-VAR-56

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 apply for a permit to convert a residential accessory structure into a Detached Accessory Dwelling Unit (DADU) and add 192 sf addition and accessible ramp to the existing structure;
- The site currently contains a 3322 sf single family dwelling with an attached garage, three sheds and the Residential Accessory structure that was converted into a residence;
- The site is adjacent to single family residential uses;
- The residential accessory structure was permitted in 2004 under permit # 04-RA-039;
- The site has no FEMA floodplain on the lot;
- The site is not in a natural or scenic area;
- There are other parcels nearby that are under 2.50 acres in size;
- 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:

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- See findings under A(1);
- The parcel is addressed off of W Cockrell Drive, a private drive and is accessed by nine other lots on a shared easement commonly referred to as Dogwood Lane;
- There is one septic systems on the property permitting four bedrooms under permit #22071;
- 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 petition site is zoned Agriculture / Rural Reserve (AG/RR) that requires a 2.5 acre minimum lot size;
- The 2.04 +/- acre parcel is a legal lot of record and is not in a platted subdivision;
- 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:

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- See findings under A(1);
- There is no floodplain on site;
- Drainage is to the north;
- The proposed addition is for 192 sf addition and accessible ramp;
- Conclusion: It would not promote conditions detrimental to the use and enjoyment of other properties in the area

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

Findings:

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

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

Findings:

- If the variance for the 2.5 acre minimum lot requirement from Chapter 804 is not granted the petitioner would not be able to add to an existing structure;
- Practical difficulties have been demonstrated in that the lot exists in the current configuration;
- One additional variance is required from the 5 acre minimum lot requirement for a DADU Chapter 802;

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.

QUESTIONS FOR STAFF – 1910-VAR-55 & 1910-VAR-56 – James

Kaczmarczyk: Any questions for staff? No. Would the petitioner like to speak?

PETITIONER/PETITIONER'S REPRESENTATIVE – 1910-VAR-55 & 1910-VAR-56 – James

Kaczmarczyk: If you could sign in for us, sir. Could you state your name?

James: My name is Howard James.

Kaczmarczyk: Could you raise your right hand? Do you swear to tell the truth and nothing but the truth?

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James: Yes.

Kaczmarczyk: Thank you, sir.

James: So, this is for my wife's mother and she is here. When her husband passed away, we moved her to our house and we just converted our, we added a kitchen to the existing structure so she could live there. She is going to be 88 next month and the bathroom is 25' feet from her bedroom. She is using a walker now and just to get here you have to take her in a wheelchair. So, we wanted to put a bathroom right there and we had no idea but we applied for a permit. So, all that we are trying to do is put a bathroom there. I went to the Health Department and we had a 4 bedroom permit and I had to wait till this week because Randy was gone last week. We got it on Monday and we turned it in so we are going to put the new septic system in and we think we are trying to do everything right. All we are asking is to build a structure so she doesn't have to go so far. She has already fell once in the house and broke her shoulder. That is why she is using the walker now. So, we just want a place to make her comfortable.

Clements: Thank you for going through the procedures.

Kaczmarczyk: Anybody wish is speak on behalf of the petition? Anyone here wish to speak against the petition? Seeing none. I will call for a motion.

SUPPORTERS – 1910-VAR-55 & 1910-VAR-56 – James: None

FURTHER SUPPORTERS – 1910-VAR-55 & 1910-VAR-56 – James: None

REMONSTRATORS –1910-VAR-55 & 1910-VAR-56 – James: None

ADDITIONAL QUESTIONS FOR STAFF – 1910-VAR-55 & 1910-VAR-56 – James: None

FURTHER QUESTIONS FOR STAFF – 1910-VAR-55 & 1910-VAR-56 - James

Clements: **In the matter of case number 1910-VAR-55 and 1910-VAR-56, I recommend that we approve the Design Standards Variance to Chapter 802, Condition 53 and 55, based on the petition and the findings of fact.**

Kaczmarczyk: **I second** the motion.

Guerrettaz: They provided the updated Septic Permit so that is no longer a condition of approval.

Behrman: Correct.

Kaczmarczyk: Would you call the roll for us, Larry?

Wilson: The vote is on petition 1910-VAR-55 and 1910-VAR-56, the James Minimum Lot Size Variance and the James Variance from the Minimum Lot Standard for a Detached Accessory Dwelling Unit structure. A vote in favor is a vote to approve both variances, based upon the

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findings. Mary Beth Kaczmarczyk?

Kaczmarczyk: Yes.

Wilson: Margaret Clements?

Clements: Yes.

Wilson: Bernie Guerrettaz?

Guerrettaz: Yes.

Wilson: The variances are approved 3 to 0, both variances.

The motion in cases 1910-VAR-55, James Minimum Lot Size Variance to Chapter 804, and 1910-VAR-56, James DADU Minimum Lot Size Variance to Chapter 802, in favor of approving the variances, carried unanimously (3-0).

DRAFT

NEW BUSINESS

5. 1910-VAR-57 Lash Minimum Lot Size Variance to Chapter 804 & 833

One (1) 1.56 +/- acre parcel in Van Buren Township, Section 11 & 14 at 4505 W State Road 45. **Zoned RE2.5 & AG/RR.**

BOARD ACTION: Kaczmarczyk introduced the petition.

STAFF ACTION:

Crecelius: Thank you. This petition is located at 4505 West State Road 45. It is located in Van Buren Township, Section 11. It is unplatted and it is 1 lot of record that is approximately 1.5 acres. It is split zone across RE2.5 on the top side and on the bottom it is Agricultural/Rural Reserve. Today's petition is requesting a Minimum Lot Size Variance from Chapter 804 and Chapter 833 because of the split zone. Both of these zones have a minimum lot size of 2.5 acres. The Comprehensive Plan identifies the petition site as Phase 1 as Conservation Residential and Phase 2 as Gateway West. The site is gently slopes. It slopes down to State Road 45. We can see on this slide with the slope map. The map on the screen currently shows other parcels in the area that are also under 2.5 acres. So, it is not necessarily unusual along the road to see other sites that are a little small. This is a street view of the home. Right now it is in a dilapidated condition. This is the minimum variance required in order to add an addition to this home. They will be bringing it back up to livable standard but also adding an attached garage and also expanding the front covered porch. This is the current state that the home is in on the top left. It is a really a unique home so I am happy to see that some is going to be bring it back to life. On the left we have our setbacks listed from the building permit and on the right we have the proposed additions. The right photo upper left is the new garage and on the bottom of the right photo we can see the new expanded front covered porch footprint. Staff recommends approval to the Designs Standards Variance for the Minimum Lot Size requirement due to the findings of fact.

RECOMMENDED MOTION:

Approve the design standards variance to the Minimum Lot Size requirement due to the findings of fact.

FINDINGS OF FACT: Buildable Area Size

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 1.58 +/- acres and is split-zoned RE2.5 and Agricultural/Rural Reserve;
- The site contains a Single Family Residence built in approximately 1935;
- The site has access off of W State Road 45;
- There is no evidence of karst features, FEMA floodplain;

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- Approval of the variance would allow the petitioner to add an attached garage and covered porch to the existing SFR;
- 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 State Road 45, and is a Major Arterial Road (150') according to the Thoroughfare Plan;
- The home and proposed front porch addition meets the minimum building front setback from the ROW of 75';
- The site has access to water and utilizes a 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 re-zone the property; and,

Findings:

- See findings under A(1) and A(2);
- The comprehensive plan identifies the site location as rural residential which states that density in this area "shall preserve the rural lifestyle opportunity of this area and help protect nearby Vulnerable Lands";
- The restoration and addition of the existing SFR would not significantly alter the character of the site;
- 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;

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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 building permit for the proposed additions through the Building Department;
- 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 the minimum necessary to alter structures or the configuration of this 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 – 1910-VAR-57 – Lash

Kaczmarczyk: Any questions for staff? None. Would the petitioner like to speak? No. Anyone want to speak on behalf of the petition? Anyone wish to speak against the petition? Seeing none. I will call for a motion.

PETITIONER/PETITIONER'S REPRESENTATIVE – 1910-VAR-57 – Lash: None

SUPPORTERS – 1910-VAR-57 – Lash: None

FURTHER SUPPORTERS – 1910-VAR-57 – Lash: None

REMONSTRATORS – 1910-VAR-57 – Lash: None

ADDITIONAL QUESTIONS FOR STAFF – 1910-VAR-57 – Lash: None

FURTHER QUESTIONS FOR STAFF – 1910-VAR-57 – Lash

Clements: In the matter of, I have to find it again. **In the matter of 1910-VAR-57, I recommend that we approve the design standards variance to the Minimum Lot Size requirement due to the findings of fact.**

Guerrettaz: I **second**.

Wilson: Ok. The vote is on petition 1910-VAR-57, Lash Minimum Lot Size Variance. A vote in favor is a vote to approve based upon the findings. Margaret Clements?

Clements: Yes.

Wilson: Bernie Guerrettaz?

Guerrettaz: Yes.

Wilson: Mary Beth Kaczmarczyk?

Kaczmarczyk: Yes.

Wilson: The variance is approved by a 3 to 0 vote.

The motion in case 1910-VAR-57, Lash Minimum Lot Size Variance to Chapter 804 & 833, in favor of approval of the variance, carried unanimously (3-0).

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NEW BUSINESS

6. 1910-VAR-58 Douglas Minimum Lot Size Variance to Chapter 804

7. 1910-VAR-59 Douglas Minimum Lot Width Variance to Chapter 804

One (1) 1.4 +/- acre parcel in Perry Township, Section 23 at 3800 E Moores Creek RD. **Zoned AG/RR.**

BOARD ACTION: Kaczmarczyk introduced the petition.

STAFF ACTION:

Wilson: Our next petitions are 1910-VAR-58 and 1910-VAR-59, the Douglas Minimum Lot Size Variance to Chapter 804 and the Douglas Minimum Lot Width Variance to Chapter 804. I am handling these for Drew Myers tonight but the report that he prepared is in your packet. This is a 1.4 acre parcel in Perry Township, located at 3800 East Moores Creek Road. It is zoned Agricultural/Rural Reserve. The minimum lot size in Agricultural/Rural Reserve is 2.5 acres and the minimum lot is 200 feet. They are requesting a design variance to reduce the minimum lot size to meet the minimum lot size requirement in order to permit the conversion of an attached carport into a 336' square foot sunroom. They would also like to do an additional storage building of 256' square feet. In order to do this addition it is required to get a variance from both the lot width and the minimum lot size. This variance will run with the land. This property was once a, there is the location of the site and there is the Agricultural/Rural Reserve area, you can see the green area, this parcel was once a part of that overall parcel to the east, which is a church. I am not sure if it was a parsonage that was later sold off but it became a separate parcel at some point in time. There you can see it again. The Comprehensive Plan has this as Rural Residential. There is a view of the site. Here are lots of aerial photography showing the site. You can see it is, let me verify this, it is a 1.4 acre site. So, it is a little more than an acre less than the minimum lot size and it is a 128' feet in width. The requirement is 200' feet in width. If it was 180' feet or more we would grant a waiver but since it is not it has to go to the BZA for approval, in the Agricultural/Rural Reserve zone. Again, we have numerous aerial shots. You can see it is a narrow lot but apparently it meets all setbacks. There will be encroachment of setbacks for the construction that is proposed. So, the variance is only for lot size and for lot width. The drawings are attached. The recommended motion was to approve both design standards variances to Chapter 804 for Minimum Lot Size and Minimum Lot Width, based upon the findings of fact and subject to County Highway and Drainage Engineer reports. I don't believe they had any comments. I will note that if you go to the zoning it has different, more compact zoning to the right which is Suburban Residential. If it had been in the Suburban Residential it would be allowed to build if it met the setback requirements. That is another reason for our recommendation to approve both variances. If you have any questions, I will take those.

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 28' x 12' (336 sq. ft.) carport to be converted to a sunroom on the property;
- Approval of the variance would allow a 16' x 16' (256 sq. ft.) storage building to be constructed on the property;
- There are no designated natural or scenic areas nearby;
- The petitioner's site is predominately flat with the majority of the property exhibiting slopes under 15 percent.
- The petitioner's site is located in Area 3 of 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);
- E Moores Creek Road is a local road that runs along the northern property line;
- Neither the sunroom nor the storage shed will be located in any yard setback;
- Neither converting the carport to a sunroom nor the construction of a storage building will have any 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 1.4 acres;
- The use is residential with surrounding areas being residential, agricultural, and religious

organizations;

- The Comprehensive Plan designates this area as MCUA Rural Transition;
- This is a preexisting lot that has not changed dimensions since before the current ordinance;
- There is one other lot within a quarter mile radius from the petition site, zoned AG/RR, that does 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;

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 is one other lot within a quarter mile radius from the petition site, zoned AG/RR, that does not meet minimum lot size requirements;
- There are over 50 other lots within a quarter mile radius from the petition site, zoned in varying districts, that are under 2.5 acres in size;
- **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 north and to the south with a high point existing approximately where the existing single family residence stands;
- Neither the proposed sunroom nor the storage building interfere with any easements or utilities, and are within the minimum setbacks;

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- **Conclusion:** There are no foreseeable detrimental conditions to the use and enjoyment of other properties that would result from the proposed sunroom and storage building.

(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 size for the zoning district (AG/RR);
- The home (ca. 1968) 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 28' x 12' (336 sq. ft.) carport to be converted to a sunroom on the property;
- Approval of the variance would allow a 16' x 16' (256 sq. ft.) storage building to be constructed on the property;
- There are no designated natural or scenic areas nearby;
- The petitioner's site is predominately flat with the majority of the property exhibiting slopes under 15 percent.
- The petitioner's site is located in Area 3 of 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);
- E Moores Creek Road is a local road that runs along the northern property line;
- Neither the sunroom nor the storage shed will be located in any yard setback;
- Neither converting the carport to a sunroom nor the construction of a storage building will have any 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 128' at building line;
- The use is residential with surrounding areas being residential, agricultural, and religious organization;
- The Comprehensive Plan designates this area as MCUA Rural Transition;
- This is a preexisting lot that has not changed dimensions since before the current zoning ordinance;
- **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 north and to the south with a high point existing approximately where the existing single family residence stands;
- Neither the proposed sunroom nor the storage building interfere with any easements or utilities, and are within the 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. 1968) 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

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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 – 1910-VAR-58 & 1910-VAR-59 – Douglas: None

**PETITIONER/PETITIONER’S REPRESENTATIVE –
1910-VAR-58 & 1910-VAR-59 – Douglas**

Kaczmarczyk: Would the petitioner like to speak? Would anyone like to speak on behalf of the petition? Seeing none. Would anyone like to speak against the petition? Seeing none. I can call for a motion.

SUPPORTERS – 1910-VAR-58 & 1910-VAR-59 – Douglas: None

FURTHER SUPPORTERS – 1910-VAR-58 & 1910-VAR-59 – Douglas: None

REMONSTRATORS – 1910-VAR-58 & 1910-VAR-59 – Douglas: None

ADDITIONAL QUESTIONS FOR STAFF – 1910-VAR-58 & 1910-VAR-59 – Douglas: None

FURTHER QUESTIONS FOR STAFF – 1910-VAR-58 & 1910-VAR-59 – Douglas

Clements: **I would like to move that we approve case number 1910-VAR-58 and 1910-VAR-59, based on staff recommendation and the findings of fact.**

Kaczmarczyk: I **second** the motion.

Wilson: Ok, I will call the roll. The vote is on petition 1910-VAR-58 and 1910-VAR-59, the Douglas Minimum Lot Size request and the Douglas Minimum Lot Width request, respectively. A vote in favor is a vote to approve both variances. Bernie Guerrettaz?

Guerrettaz: Yes.

Wilson: Margaret Clements?

Clements: Yes.

Wilson: Mary Beth Kaczmarczyk?

Kaczmarczyk: Yes.

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

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The motion in cases 1910-VAR-58, Douglas Minimum Lot Size Variance to Chapter 804, and 1910-VAR-59, Douglas Minimum Lot Width Variance to Chapter 804, in favor of approving the variances, carried unanimously (3-0).

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REPORTS:

Planning/Wilson: I have nothing further and no announcements tonight. I think we do have a fairly long agenda for December, but we will let you know. We have one more meeting this year.

Legal/Schilling: No report

The meeting adjourned at 6:37 P.M.

Sign:

Attest:

Mary Beth Kacmarczyk, Chairman

Larry J. Wilson, Secretary

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