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**BOARD OF ZONING APPEALS
Regular Meeting Minutes
September 10, 2018 - 6:00 p.m.**

CALL TO ORDER

ROLL CALL

INTRODUCTION OF EVIDENCE

APPROVAL OF AGENDA

APPROVAL OF MINUTES

June 6, 2018

August 1, 2018

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

ROLL CALL: Peter Kaczmarczyk, Margaret Clements, Michael McNeil, Susie Johnson

ABSENT: Mark Kruzan

**STAFF PRESENT: Larry Wilson, Director, Tammy Behrman, Planner/GIS Specialist
Jordan Yanke, Planner/GIS Specialist**

OTHERS PRESENT: David Schilling, Legal

INTRODUCTION OF EVIDENCE:

Larry Wilson introduced the following items into evidence:

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

Monroe County Zoning Ordinance (as adopted and amended)

Monroe County Subdivision Control Ordinance (as adopted and amended)

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

Cases advertised and scheduled for hearing on tonight's agenda

The motion to approve the introduction of evidence carried unanimously.

APPROVAL OF AGENDA:

Motion to approve the agenda carried unanimously.

APPROVAL OF MINUTES:

Motion to approval of June 6, 2018 minutes, carried unanimously.

Motion to approval of August 1, 2018 minutes, carried unanimously.

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OLD BUSINESS:

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

NEW BUSINESS:

- 1. 1806-CDU-04 I-69 Towers II, LLC Conditional Use for Wireless Communications Facility (WCF), Chapter 813**
One (1) 9.85 +/- acre parcel in Indian Creek Township, Section 3 at 7430 S Harmony Rd. **Zoned AG/RR.**
****CONTINUED BY PETITIONER TO 11/07/2018 BZA MEETING****
- 2. 1808-VAR-23 Sears Minimum Lot Size Variance to Chapter 804**
- 3. 1808-VAR-24 Sears Minimum Lot Width Variance to Chapter 804**
One (1) 2.00 +/- acre parcel in Richland Township, Section 22 at 3368 N Thomas Rd. **Zoned AG/RR.**
- 4. 1808-CDU-07 AT&T Mobility Conditional Use for Wireless Communications Facility (WCF), Chapter 813**
One (1) 11.64 +/- parcel in Washington Township, Section 3 at 5894 N Turkey Track Rd. **Zoned FR.**
- 5. 1808-VAR-25 Northern Monroe Fire Territory Use Variance to Chapter 802**
One (1) 28.37 +/- acre parcel in Washington Township, Section 15 at 8768 N Wayport Rd. (Former address: 8768 N State Road 37).
Zoned PB/AG/RR.

REPORTS:

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

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OLD BUSINESS

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

BOARD ACTION: Kaczmarczyk introduced the petition.

STAFF ACTION:

Yanke: One thing that I should mention is that the case that was continued on the agenda, if there is anyone here in the audience that may be here for that one, I know that it's been talked about a bit. So, I want to make sure that people have the opportunity to know that. Alright, Peter....

Johnson: Do you want to announce the address just in case somebody would only recognize it by the address and not by the case that is going to be continued?

Yanke: Yes, so the first item under new business was a Conditional Use for a Wireless Communications Facility at 7430 South Harmony Road. If you are here for that, that case has been continued to the November meeting.

Johnson: Thank you.

Yanke: As you mentioned, Peter, this is a variance request for a Condition under Tourist Home in the ordinance in Chapter 802. It is 5.22 acre parcel and it is located at 9521 South Strain Ridge Road. The zoning is Agricultural/Rural Reserve and it is in the Environmental Constraints Area. I wasn't going to go through everything unless you requested. I included the minutes from the last meeting so I was actually going to ask for your direction in terms of how much we should present on it.

Kaczmarczyk: Well, I was here. I do know that the minutes didn't actually accrue in everybody's packet. Yeah, hers was just several blank pages, which is very odd.

Johnson: I did have a chance to kind of go through them. I don't know if Michael had an opportunity.

McNeil: A little bit.

Johnson: A little bit.

Kaczmarczyk: The two of you weren't here, so would you like him to give a full version, or an abbreviated version?

McNeil: An abbreviated version on why you are recommending denial.

Yanke: Ok, sure and I will just run through a couple of the slides then too, before that. So, here is the location as you see off of Strain Ridge Road. Comprehensive Plan is Rural Residential. The current zoning map is Agricultural/Rural Reserve. Here are a couple site conditions maps. You

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can see in the bottom right how close it is to the adjoining principal use structure, 130 feet. The ordinance stipulated 200 feet for a Tourist Home. Here is a slope map. Now we get to some photos, as you see South Strain Ridge Road both ways, on the left side and then also a driveway approach on the right side of the picture. A couple more pictures here, the driveway approach and then some of the photos of the actual structure on the bottom half that was being used a Tourist Home Cabin and then the Planning Department enacted an enforcement case on it leading to this variance. On the left, it is hard to see but that is the neighboring property owner's home that is 130 feet away. There is actually another picture that shows it a little better at the end. On the right that is an actual aerial overview that shows the looping driveway that was discussed last time the two points of ingress/egress and then the green box is over the structure in question. Here is the site plan submitted by the petitioner. The recommended motion is denial based on the findings of fact and this is the same recommended motion as the last time. Unfortunately, the minutes didn't show up but basically one of the major reasons that we are recommending denial is the lack of the finding of a practical difficulty. We found that the petitioner has started this basically illegally and we came to find out through a citizen complaint and we weren't able to establish practical difficulty in the findings in fact. Another one that we are looking at strictly is the detrimental use to the adjoining property owners. We have received complaints on it, testimony at the last meeting and one thing that was brought up at the last meeting is that noise is considered in one of those findings of fact. Those are basically the two major factors that we were looking at. If there is something that I am forgetting, we can discuss that further but I will take some questions. I know the petitioner is here to speak on the case and then we can address any concerns you may have.

RECOMMENDED MOTION:

Deny the design standards variance to Chapter 802 Condition No. 48 (Setback for *Tourist Home or Cabin*) based on the findings of fact.

FINDINGS OF FACT: Setback for a *Tourist Home or Cabin* Variance

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 apply for an Improvement Location Permit to utilize an existing structure as a *Tourist Home of Cabin*, with a 130' setback distance to the adjoining southern property's principle use structure;
- The petition site is zoned Agriculture/Rural Reserve (AG/RR) and is located within the Environmental Constraints Overlay Area 1 (ECO1), with a non-residential side yard setback requirement of 50' from the side property line;
- According to ordinance requirements, the proposed *Tourist Home or Cabin* shall be located no closer than two hundred (200') feet from any adjoining property's principal

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use structure not currently being used as a *Tourist Home or Cabin*;

- The property to the south contains a principal use structure being used as a single family dwelling;
- The petition site currently contains two structures, dating back to 1968 and 1969: a single family dwelling and a detached garage;
- Access to the property is derived from S Strain Ridge Road, a designated Major Collector;
- No future development of the petition site is proposed at this time;
- The petition site is not located in FEMA Floodplain;
- There are no known karst areas;
- Conclusion: It would not impair the stability of a natural or scenic area;

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

Findings:

- See Findings under Section A(1);
- No changes to road access, utilities, or existing private sewage disposal system are proposed by the petitioner with this variance request;
- Conclusion: It would not interfere with or make more dangerous, difficult, or costly, the use, installation, or maintenance of existing or planned transportation and utility facilities;

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

Findings:

- See Findings under Section A(1) and A(2);
- Surrounding properties are zoned Agriculture/Rural Reserve (AG/RR) and Suburban Residential (SR);
- The existing location of the structure in question would meet all other density, bulk, setback and area standards for a *Tourist Home or Cabin*;
- The 5.22 +/- acre parcel is a legal lot of record and is not platted;
- The proposed use of the petition site is *Tourist Home or Cabin*;
- *Tourist Home or Cabin* is defined as a building, or portion thereof, in which four (4) or fewer guest rooms are furnished to the public under the terms of a short-term lodging agreement;
- The adjoining and surrounding uses appear to be primarily single family dwellings;
- 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;
- Note the July 2018 Board of Zoning Appeals minutes regarding testimony from the public and comments made by staff and the Board members during the public hearing;

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

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

Findings:

- See Findings under Section A;
- *Tourist Home or Cabin* is a permitted use in the Agriculture/Rural Reserve (AG/RR) zoning district, provided Chapter 802 Condition No. 48 is satisfied;
- The distance of the proposed *Tourist Home or Cabin* is approximately 130' from the adjoining property's principal use structure, meaning a 70' encroachment on the setback requirement;
- *Tourist Home or Cabin* setback requirements ensure that neighboring property's principal use structures are 200' from a *Tourist Home or Cabin*, and that the comfort, convenience, use, and value of adjoining property owners are not impacted by *Tourist Home or Cabin* operations;
- Due to the fact this variance request is complaint/enforcement driven by the Planning Department, it is evident the *Tourist Home or Cabin* operation at the petition site does not satisfy the purposes of the setback standard of 200' described in the previous bullet point;
- Conclusion: The specific purposes of the design standard sought to be varied would be not satisfied;

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

Findings:

- See Findings under Section A and B(1);
- No future development of the petition site is proposed at this time;
- There is no FEMA floodplain on the petition site and no apparent karst features;
- Based on previous enforcement and research pertaining to the *Tourist Home or Cabin* on the petition site, it is evident there are adverse impacts on the surrounding properties associated with the use. One impact not specifically listed above that is considered includes noise associated with the use;

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- Conclusion: It would 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 request is approved, the petitioner is required to meet all other Improvement Location Permit (ILP) requirements and design standards for a *Tourist Home or Cabin*;
- Application of the 200' setback requirement for a *Tourist Home or Cabin* is a standard applied to all *Tourist Home or Cabin* uses;
- There are no practical difficulties in the use of the property, as the zoning permits the parcel and existing structure in question to be used as a single family residence;
- The petitioner started the use of a *Tourist Home or Cabin* without proper approvals and cannot claim practical difficulties due to an ordinance change. Any “practical difficulty” claimed by the petitioner or representative is self-inflicted;
- Conclusion: Practical difficulties have not been established;

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

QUESTIONS FOR STAFF –1805-VAR-14 - Schopp

Kaczmarczyk: Thank you, Jordan. Yes, questions?

McNeil: Is there anything in the record that tells that the petitioner has acknowledge of the using of the property illegally?

Yanke: It is under enforcement. In 2017 we had a couple enforcement letters sent out to the property owner to a PO Box. There are several properties along the lake there that are owned under the same owner name and have a PO Box. There are two properties that we specifically sent letters of enforcement action to in July of last year and then I believe a follow-up in September. That is

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how they became aware of the fact that they were utilizing it illegally. I can't speak to their thoughts before they enacted the actual Tourist Home or Cabin Use on it or Airbnb. I do not recall if that was specifically addressed in the last meeting. I don't think it was.

McNeil: Thank you.

Clements: I would like to ask Jordan whether or not those use issues in the letters that you issues were related to the event of a wedding for the family or was that a separate occasion?

Yanke: I believe that is a separate occasion. In the letter it just specifically lays out that Condition #48, 200 feet because we can't do the realization that there was activity going on there and then we found a listing on Airbnb of the structure being advertised as that.

Clements: Ok, thank you.

Johnson: So, in reviewing the case it seems like the major stumbling block here is that the zoning ordinance requires that the properties be no more than 200 feet at their closest point from one another and I did have an opportunity to look at Peter's minutes real quickly to see if there was any conclusions on why we arrived at 200 feet being the magic number. It didn't look like in the minutes that you had any real hard reason as to why 200 feet as opposed to 260 feet or, have you since the last hearing been able to research that anymore and come to more conclusions as to why the 200 feet?

Yanke: Well, I think I may let, I think Dave addressed that at the last meeting. I think one of the main things in the minutes was the Minimum Lot Size Standard for those types of zoning districts is 200 feet, so that is kind of the typical width of the lot at that time. I can't remember if you raised any other points at the last meeting that the Commissioners basically ultimately approved an ordinance years back setting a number. But as far as that goes, I don't think we have any more detailed information unless Larry....

Johnson: So, the minimum lot width is 200 feet but that doesn't in anyway change the setback. It is just that the minimum lot width is 200 and then there are setback requirements also.

Yanke: Yes. The lot width requirement is 200 feet for that zone. But then you are right for this specific type of use it is 200 feet from the adjoining principal use structure. So, in this case it is only 130 feet from that structure.

Johnson: Right but I guess my point is if we say we arrived at 200 feet because that is the typical lot width, that does not imply that the property was, that the house was inappropriately placed on the lot. It could have been placed on the lot properly and still not meet the Airbnb setback requirement but it would meet the setback for a home in that zone. Correct?

Yanke: True, yes I understand what you are saying.

Wilson: I don't have a lot of information. I will say that from hearing from past Plan Commission members who discussed it during the time that it was enacted, there was a lot of concern about

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privacy, that neighbors not be exposed to parties and as well as the noise issue and that was one of the reasons the 200 feet came about. They also excluded certain zones. We do not allow Tourist Homes in the SR zone, for example. Because it is small lots, the lots are close together. I think it was just a question of like 200 feet is a distance that provides some insulation from activities going on that are really commercial rather than residential. I think that is where it came about. I know David said at the last meeting that the distance in Brown County is somewhat larger than what we have in our ordinance.

Johnson: Yeah, I saw that 250 feet I think is what you said Brown County was.

Schilling: Yes.

Wilson: My understanding was it is to create a buffer between traditional residential use and what is really a commercial use.

Johnson: Right. Another question. Does the county have a noise ordinance that could be applied if the adjacent property owner was having a problem with noise?

Wilson: We have a limited noise ordinance. I believe what it says is there can be no amplified sound after 10 o'clock that you could hear from an adjacent property. But it is somewhat limited and it is subject to the ability of the sheriff's department to be able to enforce it. Do I have the right hours on that, Dave?

Schilling: Yes.

Johnson: Ok.

Wilson: There are some things that we can't regulate like fireworks that are exempt by state statute.

Kaczmarczyk: Any other questions for staff? Alright, none here. In that case, would the petitioner or the petitioner's representative like to address the Board?

PETITIONER/PETITIONER'S REPRESENTATIVE – 1805-VAR-14 – Schopp

Carmin: Mike Carmin representing the petitioner. Before I forget, I want to follow-up on a recent discussion. Larry wasn't here at the time. Jordan was here at the time. The 200 feet was a staff recommendation to the Plan Commission. This whole ordinance came about because we had some of these Tourist Cabins out there. These were happening and a couple of them were problems. There was no permitted use in the table of uses to allow for it, so recognizing that there was a essentially a demand for this type of use, the staff actually took the lead on getting something organized and proposing an ordinance to the Monroe County Commissioners, it went to the Plan Commission first, to allow this use with some rules and restrictions on it. So the 200 feet was actually was a staff proposal, not based on anything empirical other than it was a good number. I mean, that is about what it comes down to. This is about 60 feet from one end to the other, so it doesn't take a decimal reader to tell you that the functional difference in volume from that wall to that wall, 130 feet, 140 feet to 200 feet is the neighbors wall. It is not a magic number. But it is the

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chosen distance and it is the standard and it is what we have to live with. But it is not based on an empirical study that says there is something magic starting at 200 feet the volume drops off or anything like that. So, back to the petition. A couple of clarifications, last time and we have done it again tonight we have talked for several minutes about violations and complaints on a different property, not this property and it is a different owner. Now it is family. It is the son but what he was doing on his property several lots to the north, which was the site of the complaints that I am aware of, it was not this property. It was not Curtis Schopp, the owner, the petitioner on this one. Although it was his son, but he is an adult and it's his property and he was doing what he was doing. That has been stopped and corrected. As for this property, Jordan could you show the photo that shows the lot lines?

Jordan: Yes, just tell me when to stop.

Carmin: That helps. The lot in the middle this is the subject property. This is the property that has the other structure on it. The one that says it is 630 on the contour line that is the subject property that we are talking about. You can see the long, narrow strip in between there. So, the petitioner when they start this they believed they were going to be in compliance. They didn't go through the process to apply for any permits and get it done but if you look at that, the ordinance says in footnote 48 regarding this as a use, which by the way, this is a permitted use in this zone. It is, the need is because of the 200 foot distance issue. The use itself, by table, is permitted in this zone. But also has the footnote number 48, and what 48 says is it sets out the standards for the Tourist Home even as a permitted use. Part B in that says the Tourist Home or Cabin shall not be located closer than 200 feet from any adjoining principal use structures not currently being used as a Tourist Home or from the adjoining property setback. Now twice the word adjoining is used. I think most of us could say that this lot, this is the Terlizzi home, the property that has the structure on it, is not an adjoining lot. We have a strip between the 2. Now, David is going to tell you that the courts have said adjoining, adjacent, being in close proximity, there is some authority that would say otherwise. If you look at the definition of adjoining it says touching. If you look at a couple of court cases there is some authority out there that would say that that adjoining when we get into these issues actually means just in close proximity. But to the lay person looking at that there is no structure on an adjoining lot and we meet setback requirements or so they believed. But that is not why we are here tonight. We chose not to appeal the staff interpretation of that so we are here to deal with the 200 foot issue. So, what I given you are a couple of things, proposed rules and then specific findings. I am just going to talk through those because that would tell you what we have. With regard to the proposed rules, the ordinance actually contemplates the use of rules. Again, footnote 48 on the table of uses talking about Tourist Homes and Conditions, specifically talks about rules in readable size and format should be posted outside of the main entrance of the Tourist Home or Cabin and shall include the following, and it goes into 2 or 3 rules not germane to our discussion tonight. But clearly the ordinance contemplates the use of rules to control the Tourist Home use. Proposing rules, submittal rules is not unusual, in fact in keeping with the spirit of the ordinance of we are going to qualify or limit the use in certain ways by requiring rules to be posted that do that. So look at the rules that we have to propose. The 4 rental occupants, 2 per bedroom. That is the ordinance. It limits to 2 occupants per dwelling room or guest room and this is a 2 bedroom, so it is limited to 4 already. Guests no more than 15 persons that is not talking about overnight people. If you look at this the view of the lake and its location it is the type of thing that there could be a gathering of friends. People renting it and having some friends down.

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So we will be putting some limits on that. If you talk about a family reunion, 15 gets there real easily but that's 15 and emphasizing that is not overnight people. These would just be the temporary guests for the day activity. Hours of operation, not required by the ordinance. This sets up and this does not take away from the county's noise ordinance by as a supplement to that, outdoor activity, not talking about inside the structure but outdoor activity, which would seem to be the issue of concern, would be limited to not later than 9 o'clock Sunday through Thursday. 10:30 on Fridays and Saturdays. Again, this has nothing to do with the county's noise ordinance. That would be in addition to and a further restriction. Then there is another photograph, the one that I submitted to you Jordan, if you show me that one. This is, the picnic tables are on our property with the petition. The structures just off the photograph. This is the eastside of it. That is the Terlizzi home. There was some discussion last time of where it was built, how close to the property line because it is relatively close. It is a large structure. That is their privacy fence. So you see in the rules proposal about maintaining a privacy fence to good order or repair. Should they choose to not maintain or to choose to take down the fence, the rule would have us putting our own up that would be maintained, maintain a privacy fence along that line. I don't mean to keep bouncing around, go back to anyone of those that shows the lines and the structures. The photograph to the right shows our property. The structure is relatively in the middle of the lot not exactly but actually further bit, little further north into the south. The Terlizzi home is a large structure. The lot is only about 160 feet deep, wide and it is built relatively close to the property line. Relatively centered on the lot but it is relatively narrow lot so it puts it pretty close to the property line. 130 feet plus or minus I have been told that it actually if measures 140 feet would not seem to be 10 foot is not going to make or break one way of the other I would submit. But if it is 140 feet and if this room is 60 feet so you can think just adding the length of this room, the depth of this room to the setback we would submit does not accomplish much if any actual change. In the papers that I handed you there, I am just going to read through these. Because that is the easiest way to keep it I think in logical flow in what you have there. If you all had papers and notes from the last time you would have this. I made a couple of changes to it to add these rules. On page 18 in your packet you will see item B1, which is one of the items of finding. The staff goes through several findings and the last couple conclude that this particular requirement is not satisfied. There was a set out there of their findings and struck and several suggested findings for you for tonight. These are the facts. The residential structure on our lot, the subject lot, has been there since about 1987 or at least 87. It could have been earlier. On that one photograph it showed the 3 picnic tables you saw the fire pit on that also. That is an area for potential outside use. The deck that goes with structures, you can see it there in that photograph. It is on the water side of the structure. The fire pit is to the southeast corner. You can see the fire pit here it the left side of this photograph. But that was there when the Terlizzi's built their home as it is now. This outside use had been existence for a number of years. A variance would allow continued residential use of the property. I mean, Larry referred to it as more of a business use not residential use. It is a residential use, I'll be on a transient basis. The design standard of 200 feet is measured corner to corner. If you choose to measure any other way, it doesn't really change anything. Even doorway to doorway is over 200 feet between the 2 structures. We are proposing that the docketed rules be a part of online advertise and be posted in the cabin to restrict the hours of operation. The maximum number of uses could be there and with those the variance would meet the design standards and relieve the problem. The second page of that packet, again, on page 18 of your packet is Lot 2 and staff made a couple, their proposed findings a couple more that I have recited them and proposed that you strike those and again findings, this variance does not allow require any infrastructure, no roads, no sewer, no water lines,

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nothing. Septic is in place. Everything is permitted in that sense. So when you look at this approval, it would not promote conditions detrimental to use and enjoyment of other properties in the area; the ponding of the water, the interference of a sewage/septic disposal system, easements from water facilities, natural water courses, none of those things are affected. I still disagree with the staff's finding that those are somehow adversely affected by this variance. Because I can't find it. Last time we had a brief discussion about those are what I call external impacts that just are not affected by this variance and with the proposed rules even with external impacts we are proposing to limit or restrict in a manner that would make it easier to fit in if that remains a concern. Then on page 18, the bottom of 18 and 19 is block C of the required findings the staff's recommendation of findings, several that I would propose be struck. I would submit that there are practical difficulties here. Jordan's comments, there were a couple of things that they just couldn't find, one of which was practical difficulties. This is a permitted use. It cannot be used as a permitted as allowed because of the 200 feet and so the practical difficulties is the lot does not allow a structure on it that would meet that requirement. There is that problem. The lot is over 233 feet wide, our lot. With the Terlizzi home built as close as it is to the property line with that side of the house that newer structure extending within a couple, I think last time we were told it was within 20 feet of the property. We have conforming lot. It meets the minimum lot size standards but you can't put a structure on it and setbacks of any size at all it would have to be shed that would not be, that would be more than 200 feet away from the Terlizzi home. Now they have the right to use their lot as they choose to. But they built that structure with a bedroom overlooking a picnic area on the adjacent property, the fire pit, the paved area that was out there, already in existence. It didn't bother them to do that and I would submit that that is not a problem now. Again, with the rules I would understand their concern at midnight. I would understand their concern at wee hours of the morning and there are parties going on out there. They didn't buy into that. They didn't build a home with that expectation, I would think. But we are talking about limiting that in a manner that is consistent with the ordinance, which is use of rules to limit or qualify the use inside the cabin. Back to the proposal I gave you, there are issues with the narrow width of that adjoining lot. The Terlizzi lot is 160 feet wide only and it is tough to get a structure on there with an appreciable setback. The residence on the petitioner's parcel has been a long existing residential use. The structure is simply located on a parcel and it is about 90 feet, approximately 90 feet from the property line as opposed to the Terlizzi home which 20 feet or less from the property line. We think with the limitations of the use satisfying the concerns, what I believe would be the concerns for noise, external traffic and what would be happening on the exterior of the lot, not regulating the inside use that is should resolve concerns about any adverse impact on the adjacent property, which is only the Terlizzi home, there is no other property that is involved or at issue. We ask that you support the variance that is the setback of 200 feet. We will be, the paper said 130, I have been told it will be 140 feet. If measured carefully it still requires a variance and I would submit that you should approve it. Any questions?

Kaczmarczyk: Thank you. Any questions?

McNeil: Have the neighbors opposed this variance?

Carmin: Mr. and Mrs. Terlizzi, the people that own the house that is in this photograph do, yes. I believe last time a neighbor from about 4 lots up the road spoke against too. But she had also been adjacent to the other property that had the complaint on it.

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McNeil: Did your client believe that they were in violation at the time they received notice from the Planning Commission?

Carmin: On this property, no. As for the other property when that issue surfaced they were aware their son would be in violation, yes, when that first came up. This property, our internal discussion was the issue of it adjoining verses adjacent and then I had to raise that issue with David and he gave me his answer on that and I checked a couple cases that he cited. But no from a lay standpoint they thought they could do it here. Because they didn't think the 200 foot was going to apply.

McNeil: Was that before or after you shared your belief of the definition of that term?

Carmin: That was before. Frankly, when I first looked at it, my first reaction was adjoining means adjoining. It means touching and David tells me that he didn't agree and so that led to some research and he offered up a couple cases on point and made it a little easier to find it. But yes they did interpret adjoining to mean in close proximity.

McNeil: Thank you.

Kaczmarczyk: Any other questions for Mr. Carmin?

Clements: I don't have any at this time.

Kaczmarczyk: Ok, alright. I think we are all set then, thank you. If you want to speak, we do need to swear you in and go through all of that. Can you raise your right hand? State your name please.

Schopp: Victoria Schopp.

Kaczmarczyk: Ms. Schopp do you swear or affirm to tell the truth and nothing but the truth?

Schopp: Yes, I do.

Kaczmarczyk: Alright, thank you. Go right ahead.

Schopp: I just want to address that issue. Because the property, what I felt like was adjoining was another piece I own or my husband and I own and we own the property on the other side. All be it that that sliver that is what I considered adjoining, is a small sliver. I felt like adjoining was adjoining and that adjoining meant sharing a property line. So, when I read the regulations, I felt as if the Terlizzi property was not in play because I didn't consider it adjoining. Now, my attorney has since informed me of what the county's interpretation of adjoining is. But when we first started doing this, we didn't feel like we were in violation of the regulation because of our interpretation of adjoining. I just want to make sure that you understand that I didn't think I was doing anything wrong.

Kaczmarczyk: Any one....

McNeil: Question for Mr. Carmin.

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Kaczmarczyk: Mr. Carmin. If you could wait one moment, please, ma'am. We will get to you. Michael had a question.

McNeil: Is there an alternative way of resolving this that you file declaratory judgement actions saying that that is not adjoining or whatever your definition is?

Carmin: Well, if it is even though we didn't appeal an interpretation frankly because the way that it is raised, it could be there is not a waiver of that issue. It could be a complaint to the court that we don't have to comply with this rule because we are not an adjoining property. I mean, that is possible. There is one other resolution of it that is not preferred from our standpoint is that you move the structure about 60 feet and it stays on the lot. We could move it 60 in the north, northwest and I believe we can meet all of the county development requirements to allow that to happen. We take it outside 200 feet and if we do that there is no limitation on hours of operation. There will probably be a 3 or 4 bedroom structure and that means 6 or 8 people, not 4 people. I mean, there are negatives but we would have to relocate utility lines. We have to extend the sewer and reconnect it and some things so there is what we would not like to do resolution of it as well. I terms of this issue of adjoining versus adjacent. I don't know that I could in good faith recommend a client to go to court on that. There are a couple of cases that the Indiana Court of Appeals has used the word adjoining synonymous with the word adjacent and refer to close proximity. It is usually poorly spent client money to pursue an appeal when there is something out there like that.

Kaczmarczyk: Any other questions? Alright. Thank you. Now, before we continue I did want to clarify something that Mr. Carmin said and if he disagrees, he can speak again, but I was looking at the minutes. While it is correct that the most egregious complaints were aired in the last meeting that are in the minutes concerned the other property and this property in particular. The Terlizzi's did cite specific examples of issues they had with this property. So, I did want to make clear. It sounded like you said there were no complaints about this property. Most of them were the other property but not all.

Carmin: The large group was at the other party. I am not aware of the complaints that you are talking about. This is having quite a number of people and that was the other property.

Clements: Was that just one event? I mean, that is the thing that is...how many of...

Schopp: This is a little, this is a trailer and it is probably 1,000 square feet. The second bedroom is very, very small. So you can't really sleep very many. Garrett's house which is owned by Garret and Eva Schopp, they ran their own thing and actually they are occupying that house now. When they purchased it they lived in town. They had a lease on an apartment and their intent was just to cover the mortgage for a period of time. They now live and occupy that home. That house is about 3,000 square feet. It is very large and it can sleep more than the septic would probably allow. Garrett tended to, well, even if you look at the Airbnb, it was listed for a lot of people. Ours is a 2-bedroom home and it really should never have more than 4 people overnight. It is just a different set of circumstances.

Clements: But how many objectionable events, well, maybe I will ask this of the Tourist....

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Schopp: At ours I am unaware of any event that....

Clements: Ok, that raised noise issues...

Schopp: Right. I believe and the county can correct me if I am wrong because in my conversations with people my understanding is that when they looked at it, they immediately measured because it is properly zoned, that they measured and found it less than the 200 feet. That is when I contacted Mike Carmin and I said but there is this adjoining property. So, my understanding is that when they started looking at it, it was the 200 feet. I was never informed and I don't even know if they are aware of which property in specifically was complained about at the time.

Clements: Ok.

Schopp: Our parties, or the people that stayed there for about a year that we did it, a year and a half, usually people came between, you know, Mother's Day and September. Because people want to be on the lake during that period. So, we did it for 2 summers and we tended to draw very small groups. I live there. The house is in my yard. Because we have the whole thing fenced in so I was living next door to it and we controlled the number of people because I didn't want a large party in my yard. Any other questions for me?

Kaczmarczyk: Alright. Thank you and I am going to clarify again because we got off talking about the other property. Yes there were complaints about the other property. But I just want to make abundantly clear looking at Mr. Terlizzi's statement in the minutes from the last meeting, he did cite on specific case where there was a loud party at the house in question. I just want to make clear there was just one but there was one that was cited.

Clements: That was helpful. Thank you.

Kaczmarczyk: Yes, very quickly.

Schopp: We have lots of parties there. As soon as we got the letter and Mike Carmin told us to yes, go ahead and stop. We stopped immediately after we received the letter. Since then this summer we have had a number of people there. It is all our family and friends, so we use the place and sometimes there are bigger parties. I don't know if Mr. Terlizzi was referring to a party that was an Airbnb party or if it was our party.

Kaczmarczyk: I don't know either. I just wanted to make clear that there was a complaint specific to that property and that was all. Alright, if there are no more questions, is there anyone in the audience who wishes to speak in favor of this petition? Seeing none. Is there anyone here tonight who wishes to speak in opposition to this petition? If so, come on up to the microphone. With luck, there is a sheet of paper and a pen there for you to sign your name.

SUPPORTERS – 1805-VAR-14 – Schopp: None

FURTHER SUPPORTERS –1805-VAR-14 – Schopp: None

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REMONSTRATORS –1805-VAR-14 – Schopp

Kaczmarczyk: If you could raise your right hand, state your name.

Terlizzi: Rhoda Terlizzi.

Kaczmarczyk: Ms. Terlizzi, do you swear or affirm to tell the truth and nothing but the truth?

Terlizzi: I do.

Kaczmarczyk: Thank you. Please go right ahead.

Terlizzi: We do live in the house next door to the property and she did say that her house is on that property but her house is way more than 200 feet away. Our house is close and when we bought our land in 1989 it was Rural Residential and when we built our house in 1999 it was still Rural Residential. We knew the gentleman who owned the property and he used to come, I mean, he wasn't there full time but he came often to the property. We did not register an actual written complaint about any of the people who have rented this property. We just let it go. But we just feel that if the standard says it should be 200 feet away then it seems to me that that would make sense that it should be 200 feet away. I don't think the fact that the attorney brought up the fact that when we built our house that our bedroom was at that end, I mean, I don't think that should enter into this at all. Yes, our bedroom is at that end of the house but I am not quite sure what it has to do with the setback supposed to be 200 feet.

Kaczmarczyk: Thank you. Anyone have any questions for Ms. Terlizzi?

McNeil: Mrs. Terlizzi, is there any other reason besides the prescribed setback of 200 feet that you object to this variance?

Terlizzi: No.

McNeil: Thank you.

Kaczmarczyk: Any other questions? Thank you very much. Is there anyone else here is evening who would like to speak in opposition to this petition? If so, you can step right up. If you could please sign in. Raise your right hand and state your name please.

Green: Debra Green.

Kaczmarczyk: Ms. Green, do you swear or affirm to the truth and nothing but the truth?

Green: Yes, I do.

Kaczmarczyk: Alright, thank you. Please go ahead.

Green: Yes, can you pull up some of the adjacent properties? The Schopp's have recently

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purchased the home right next to me. I have already had a problem with the other home, which we discussed last time. My concern is this if this does get rezoned in their favor, I feel like the next thing that is going to happen is they are going to come and want to the very same thing right next to me. As a matter of fact it is already a rental already. I think it's got a family in it. Not as an Airbnb but as a family. That is my concern is privacy. I bought the home for residential. My concern is noise, parties and all of the other things that I mentioned at the last meeting that I was already encountering with an Airbnb being right next to me.

Kaczmarczyk: Thank you. Any questions for Ms. Green?

McNeil: Is it accurate to say that your objection to this variance is based upon your fears of what is coming on other properties in the future?

Green: Yes, sir and that the 200 feet I feel should be enforced...

McNeil: Enforced.

Green: And I also feel that it is not enough.

McNeil: Thank you.

Green: Thank you.

Kaczmarczyk: Any other questions for Ms. Green? Alright, I think we are all set. Thank you. Is there anyone else here this evening who would like to speak in opposition to this petition? Alright, seeing none. Discussion? A motion?

ADDITIONAL QUESTIONS FOR STAFF –1805-VAR-14 – Schopp

Johnson: I have a couple of questions for staff?

Kaczmarczyk: Go right ahead.

Johnson: So, the Terlizzi property was built in 1999. What was the setback requirement for that property in 1999?

Yanke: The ordinance went in 1997. Let me just confirm the zoning. So, it is Suburban Residential, so the side setback is 5 feet for Suburban Residential.

Johnson: Ok and they are at 20 feet or more.

Yanke: Yeah, the home seems to be centrally located on that lot, meeting setbacks, according to the GIS.

Johnson: Ok. The Schopp home if the house as it is now has 2 bedrooms, could they, by right come and get a Building Permit and add bedrooms there without any variance requirement?

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Yanke: To use it as a single-family residence?

Johnson: No, could they come forward as a single, let's go that route, so as a single-family home could they come forward and ask for a Building Permit and add a bedroom?

Yanke: Yes, that is a permitted use as long as the home that applied for a Building Permit is meeting all other regulations, by right the use is permitted as a single-family residence.

Johnson: That would then if they were to have this variance, well, I guess I need to clarify that. So, could they as a Tourist Home come forward and ask for a Building Permit to add a bedroom?

Yanke: They would still need this variance from the setback.

Johnson: Right, but let's say we give them the variance tonight and tomorrow they come and ask for a Building Permit to add a bedroom.

Yanke: I presume so.

Wilson: I believe they would be entitled to it. I mean, there would be issues such as whether the septic tanks adequate for the number of bedrooms. They have to meet setback requirements where they added on.

Johnson: Right, but they have got plenty of

Wilson: The variance you are giving is basically to use a Tourist Home with a reduced setback. So as long as they met the reduced setback I believe they would be entitled to expand it.

Johnson: Ok, so they could add, they could potentially go from 4 occupants to 6 occupants without having to have a public discussion or public hearing.

Wilson: I believe so, yes.

McNeil: Wouldn't any addition that they would want to make also be subject to the setback conditions and therefore we would have to visit this all over again if they wanted to build?

Schilling: It would depend on how the addition laid. If they built it on the north side, there would be no problem.

McNeil: If they built it 200 feet away, no problem. Ok, thank you.

Carmin: Let me respond to that. The rule says no more than 4. If you approve it with that rule being the rule, we can't just change that no matter what we do.

Kaczmarczyk: I was a little unclear though because it says no more than 4 rental occupants, 2 per bedroom for 2 bedrooms, which would leave technically wiggle room that well, if there is 3 bedrooms it automatically escalates to 6.

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Carmin: It says 4. The rule is 2 per bedroom. It is a 2 bedroom and where we adopted that rule then that limits that.

Johnson: So, the rule would become binding and part of this variance. The rules are part of the variance.

Yanke: I guess if they would offer a commitment. Is that correct, Dave?

Johnson: Yeah, ok.

Clements: So, to me what is really in question here are 2 separate issues; one that has to do with the development of the property, which is basically we have a Rural Agricultural setting into which a Suburban Residential setting has spottily been inserted. Because in the Rural Agricultural setting having a Tourist Home is a permitted use. So inserted into that permitted use is the Suburban Residential. So the question is, to me, for planning purposes is this area going from Rural Reserve and Agricultural to Suburban Residential in which, you know, that is one thing and the other is because that would dictate whether or not the Tourist Home is no longer a permitted use. Because for planning purpose the county would want it to be Suburban rather than Rural Residential or Rural Reserve or Rural Agricultural.

Schilling: I guess I think that the lot configurations that exist there today and the zoning that exists there today predate any Tourist Home use or any Tourist Home ordinance. So those factors, the configuration, the zoning were established in the mid 90's and that was established to reflect the conditions that existed at that time. So there hasn't been any policy shift relating to zoning with respect to these properties with the exception of the addition of the Tourist Home ordinance several years ago and before that this use would have been considered a hotel or a motel and would not have been allowed in that zone.

Clement: I see.

Wilson: Also to clarify the history of the SR zone was typically they would zone lots that were too small or too narrow to meet the underlined requirements of the code. That is why you have these little brown areas that are SR. If for example this area was zoned SR and Tourist Homes would not be allowed, if a variance would be granted the use would be grandfathered and would continue. It would not be cut off just because the lot was rezoned to a different zone.

Clements: But if, let's say that I went today to purchase that home or lot and a permitted use is a Tourist Home, I would have a reasonable expectation to utilize that property as a Tourist Home. Is that not correct?

Wilson: You would only be vested if you had actually applied for a permit to operate a Tourist Home.

Clements: I see.

Wilson: If we remove a use and you are not utilizing that use it's not vested. But if you have

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applied even for a permit to do a use, then you become vested even if the ordinance changes you can continue to process that permit and utilize that use.

Clements: I see. But just looking at this green and orange map, it basically depicts the problem. You have an unjoining properties, properties that are adjoining with different classifications.

Wilson: Even if this was AG/RR, if this was all green...

Clements: Yes.

Wilson: The 200 foot would still be applicable. Nothing would be changed and they would likely meet the side yard requirement for AG/RR, the neighbors would. Nothing would change in that it would just be the 200 foot still applies to all zones. It is not zone related. It is a condition for utilizing for having a Tourist Home.

Clements: That is very helpful. Thank you.

Kaczmarczyk: Any other questions for staff or further discussion? Or I will entertain a motion.

FURTHER QUESTIONS FOR STAFF - 1805-VAR-14 – Schopp

McNeil: I have a motion.

Kaczmarczyk: Go for it.

McNeil: **On case number 1805-VAR-14, Chapter 802, Condition Number 48, Design Standards Variance Setback for Tourist Home, I move that we approve the variance based upon the findings of fact, as amended by the petitioner's proposed findings in the handout.**

Schilling: Michael, did you want to **include the rules as a condition or commitment that the petitioner has proposed?**

McNeil: **Yes.**

Kaczmarczyk: Do we have a second?

Clements: I **second.**

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

Wilson: As soon as I get my voting sheet, I will. The motion is to approve variance 1805-VAR-14, the Schopp Variance for Condition for Tourist Home regarding 200 foot separation. Approval is based upon the findings submitted by the petitioner and subject to the commitment in regard to limiting the Tourist Home to 2 bedrooms. A vote in favor is a vote to approve the variance. Margaret Clements?

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Clements: Yes.

Wilson: Peter Kaczmarczyk?

Kaczmarczyk: No.

Wilson: Michael McNeil?

McNeil: Yes.

Wilson: Susie Johnson?

Johnson: No.

Wilson: The vote is 2 to 2 and it fails for lack of majority and assume we should just continue it to the next meeting.

Yanke: Yes.

The motion in case 1805-VAR-14, Schopp Conditions for Tourist Home Variance to Chapter 802, failed for lack of majority, case is moved to the next meeting, carried (2-2).

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NEW BUSINESS

1. 1806-CDU-04

I-69 Towers II, LLC Conditional Use for Wireless Communications Facility (WCF), Chapter 813

One (1) 9.85 +/- acre parcel in Indian Creek Township, Section 3 at 7430 S Harmony Rd. **Zoned AG/RR.**

****CONTINUED BY PETITIONER TO 11/07/2018 BZA MEETING****

BOARD ACTION: Kaczmarczyk introduced the petition.

STAFF ACTION: Petition was continued by the petitioner to the 11/07/2018 meeting.

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NEW BUSINESS

2. 1808-VAR-23

Sears Minimum Lot Size Variance to Chapter 804

3. 1808-VAR-24

Sears Minimum Lot Width Variance to Chapter 804

One (1) 2.00 +/- acre parcel in Richland Township, Section 22 at 3368 N Thomas Rd. **Zoned AG/RR.**

BOARD ACTION: Kaczmarczyk introduced the petition.

STAFF ACTION:

Behrman: Alright. This petition is located at 3368 North Thomas Road. That is in Richland Township and it is currently zoned, well this is the Comprehensive Plan so it lists it as Farm and Forest. Across the street is Rural Reserve. It is currently zoned Agricultural/Rural Reserve, which requires the 2.5 Minimum Lot Size and a 200 foot Lot Width to do further development on the lot. That is why we are here. There is an issue with that this evening. This is kind of a summary of what we are dealing with here. Within a quarter square mile we actually see that there are about 8 other lots that do not meet the minimum lot requirement. The petition in this case, does have 2 acres, divided into 2 different parcels. That is why you will see it in 2 separate rectangles there. Their lot width is a 150 feet and you need to have 180 feet just to be able to require for an Administrative Waiver. They are not close enough to that so that is why they are here asking for that variance as well. There are approximately 7 other lots out there within a quarter square mile that do not meet that standard for Agricultural/Rural Reserve zoning. This is the site conditions of the property. There is an existing home with an attached garage and then a few outbuilding that they use for some accessory livestock. There is one karst feature on the property to the far east, kind of the northeast part of the property and that is not going to be anywhere near where the petitioner is proposing to do an addition. They are wanting to add a 12' by 20' patio structure called a pergola to the property and then later on after that add an above ground pool. So this further expansion is triggering the need for these variances. This is the slope map and the little yellow area there points out the karst features on the property and again, they are going to be building just right off of the home, so that should not be an issue. These are a few of the photos from the property. The top one is up their driveway going up. The top right picture is the back patio area where they will be placing the pergola and then the bottom picture is the kind of the rear facing portion of their home. It is very flat. Their septic field is located right in there. But that flat area is where they are planning to do their expansion. This is an aerial view of the property taken in 2017. I couldn't resist putting a picture of their goat and sheep in there. This is the petitioner's site plan. It is really difficult to see but what they are showing is a 12' by 20' pergola, which does not require a Building Permit I found out, but we require an Improvement Location Permit for that structure. The Building Department does require a Building Permit for a commercial pergola but not for a residential one. I learned something new with this petition. Staff is going to recommend approval for both the Minimum Lot Size and the Minimum Lot Width design standards variances, based on the findings of fact.

RECOMMENDED MOTION:

Staff recommends **approval** of both the minimum lot size and minimum lot width design standards variances 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:

Primary:

- Approval of the variance would allow an patio addition 30' diameter pool;
- There are no designated scenic areas nearby;

Conclusion:

- Approval of the variance would not impair the stability of a natural or scenic area.

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

Findings:

Primary:

- See Findings A(1);
- N Thomas Road is a minor collector that runs along the western property line;
- Adding a pool and a pergola have no foreseeable impact on utilities;
- The site utilizes a septic system;

Conclusion:

- Approval of the variance would not interfere with or make more dangerous, difficult, or costly, the use, installation, or maintenance of existing or planned transportation and utility facilities;

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

Findings:

Primary:

- 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 2.0 acres;
- The use is residential with surrounding areas being residential and agricultural;

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- The Comprehensive Plan designates this area as Farm and Forest;
- The lots in the area were created prior to the existing standards and many do not meet the current minimum lot size requirements;
- There are eight lots within a quarter square mile from the petition site zoned AG/RR that do not meet minimum lot size requirements;

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:

Primary:

- See Findings A(1) and A(3);
- The purpose of the minimum lot size is to ensure adequate light, air, privacy for adjacent properties; to provide access to any structure for maintenance and emergency services; and 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:

Primary:

- See Findings A(1) and A(3);
- The lot drains either to the west, north or into an eastern karst feature;

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 1976 home has existed within this preexisting non-conforming lot;
- Petitioner has applied for two variances, which is the minimum necessary in this case in order to further make an addition to the home on the lot in the proposed location.

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:

Primary:

- Approval of the variance would allow an patio addition 30' diameter pool;
- There are no designated scenic areas nearby;

Conclusion:

- Approval of the variance would not impair the stability of a natural or scenic area.

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

Findings:

Primary:

- See Findings A(1);
- N Thomas Road is a minor collector that runs along the western property line;
- Adding a pool and a pergola have no foreseeable impact on utilities;
- The site utilizes a septic system;

Conclusion:

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- 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:

Primary:

- 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 150’;
- The lot must be 180’ wide to be considered for an Administrative waiver;
- The use is residential with surrounding areas being residential and agricultural;
- The Comprehensive Plan designates this area as Rural Residential;
- The lots in the area were created prior to the existing standards and many do not meet the current minimum lot width requirements;
- There are more than 7 lots in a quarter square mile, zoned AG/RR, that do not meet minimum lot width requirements;

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:

Primary:

- See Findings A(1) and A(3);

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- The purpose of the minimum lot width is to ensure adequate light, air, privacy for adjacent properties; to provide access to any structure for maintenance and emergency services; and 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:

Primary:

- See Findings A(1) and A(3);
- The lot drains either to the west, north or into an eastern karst feature;

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 1976 home has existed within this preexisting non-conforming lot;
- Petitioner has applied for two variances, which is the minimum necessary in this case in order to further make an addition to the home on the lot in the 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.

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QUESTIONS FOR STAFF –1808-VAR-23 & 1808-VAR-24 – Sears

Kaczmarczyk: Thank you, Tammy. Any questions for Tammy or staff? Alright, seeing none. Would the petitioner or the petitioner's representative like to address the Board? Come on up.

**PETITIONER/PETITIONER'S REPRESENTATIVE –
1808-VAR-23 & 1808-VAR-24 – Sears**

Sears: My name is Jeth Sears.

Kaczmarczyk: Alright, Mr. Sears, do you swear or affirm to tell the truth and nothing but the truth?

Sears: Yes I do.

Kaczmarczyk: Thank you. Please continue.

Sears: My wife and I raised 4 kids in our house. One of our kids was in 4-H and we still have one of the goats and lambs still there. They stuck around after they finished 4-H. We just let them veg out at our property. But we are wanting to put a pool in our backyard with a little pergola. We have a granddaughter now we just want our kids to come back home and spend some time since its summer time.

Kaczmarczyk: Alright, thank you. Any questions for Mr. Sears? Thank you very much, sir. Is there anyone else here today who would like to speak in favor of this petition? Seeing none. Is there anyone here who would like to speak in opposition to this petition? Seeing none once again. One moment, everyone. Alright, I believe I asked for and against, correct? Yes, so seeing no one who wishes to speak, anymore discussion, comment, or I will entertain a motion?

SUPPORTERS –1808-VAR-23 & 1808-VAR-24 – Sears: None

FURTHER SUPPORTERS –1808-VAR-23 & 1808-VAR-24 – Sears: None

REMONSTRATORS –1808-VAR-23 & 1808-VAR-24 – Sears: None

ADDITIONAL QUESTIONS FOR STAFF –1808-VAR-23 & 1808-VAR-24 – Sears

FURTHER QUESTIONS FOR STAFF - 1808-VAR-23 & 1808-VAR-24 – Sears

Johnson: **I will make a motion that we approve 1808-VAR-23 and 1808-VAR-24, in accordance with the findings of fact as presented by the staff.**

McNeil: **Second.**

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

Wilson: Are we doing both at the same time?

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Kaczmarczyk: Yes.

Johnson: Yes.

Wilson: The vote is on petition 1808-VAR-23, Sears Minimum Lot Size Variance and petition number 1808-VAR-24, Sears Minimum Lot Width Variance. A vote in favor is a vote to grant both variances. Peter Kaczmarczyk?

Kaczmarczyk: Yes.

Wilson: Michael McNeil?

McNeil: Yes.

Wilson: Susie Johnson?

Johnson: Yes.

Wilson: Margaret Clements?

Clements: Yes.

Wilson: Both variances are granted 4 to 0, based upon the findings.

The motion in cases 1808-VAR-23, Sears Minimum Lot Size Variance to Chapter 804, and 1808-VAR-24, Sears Minimum Lot Width Variance to Chapter 804, in favor of approving the variances, carried unanimously (4-0)

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NEW BUSINESS

4. 1808-CDU-07 AT&T Mobility Conditional Use for Wireless Communications Facility (WCF), Chapter 813

One (1) 11.64 +/- parcel in Washington Township, Section 3 at 5894 N Turkey Track Rd. **Zoned FR.**

BOARD ACTION: Kaczmarczyk introduced the petition.

STAFF ACTION:

Yanke: Alright, thanks Peter. We saw a cell tower last month for those of you that are here so this isn't too new, I guess, in terms of seeing cell towers. As you mentioned, it is AT&T Mobility. It is a Conditional Use. It is an 11.64 acre parcel and it is located at 5894 North Turkey Track Road. The zoning is Forest Reserve. Here you have it as you go north almost into Morgan County, that red parcel right there in the top middle. The current zoning map is Forest Reserve as are the surrounding properties. The Comprehensive Plan has it as Farm and Forest. Here is a site conditions map. There is not much to look at here except for the slope map on the next page, as you will see what I added into the slide show is that it is meeting the 15 percent slope threshold, the compound area for the proposed tower. The packet had a lot more information into and I hope that showed up unlike the minutes from earlier, but some of it maybe be small. But what it was site plans and some of the other associated materials. As you can see on this blown up version, the compound area with the proposed cell tower and landscaping surrounding it and this cell tower unlike the one last month is meeting the setback requirement with the proposed fall zones. So, all that you are hearing is actually the Conditional Use not a variance like the last cell tower. I just included some of the of the other site plans surveys in the slide show but all of it is in the packet and then a view of the proposed tower that would accommodate the location. Some of the pictures here, as you can see it was hard with the construction even to figure out a way there but you see the road on the top right entering into the property and the approach on the top left. Basically on the bottom is a view from where I was standing spanning the property and you can envision the cell tower. However, in the packet if you note, one of the submittal requirements is to take 4 photo simulations and one of them is showing that you can see from the highway. This gives you a little bit better sense of the aerial view with the location, one looking north, one looking south as you can imagine the cell tower basically in the middle, that flatter area with the tree scape mostly around it to the west and then the proposed interstate 69, on the eastern side of it. So, with that the writing is small there but the recommended motion is to approve the Conditional Use Request based on the findings of fact. I do know the petitioner is here to speak on it.

RECOMMENDED MOTION:

Approve the conditional use request for Wireless Communications Facilities (WCF) based on the findings of fact.

FINDINGS OF FACT: Conditional Use, Chapter 813

In order to approve a conditional use, the Board must have findings pursuant to Chapter 813-5 Standards for Approval. The Board must find that:

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- (A) The requested conditional use is one of the conditional uses listed in Chapter 813-8 (for the traditional County planning jurisdiction) or Table 33-3 (for the former Fringe) for the zoning district in which the subject property is located. In addition to the other relevant standards imposed by or pursuant to this chapter, the standards, uses and conditions set forth in Section 813-8 are hereby incorporated as standards, uses and conditions of this chapter;**

Findings:

- The proposed use is listed as “Wireless Communications Facilities” in the Use Table in Chapter 802 of the Monroe County Zoning Ordinance;
- The requested conditional use in one of the conditional uses listed in Chapter 813;
- One condition is attached to the proposed use in Chapter 802, Condition 32;
- Condition 32 reads, “Subject to the requirements of Chapter 834 – Wireless Communications Facilities”;
- The petition property is zoned Forest Reserve (FR);

- (B) All conditions, regulations and development standards required in the Zoning Ordinance shall be satisfied;**

Findings:

- The petitioner is requesting approval to be able to construct a Wireless Communication Facility (i.e. wireless support structure or cell tower) on the subject site at a height of 199 feet;
- The petition site currently contains a residential structure and accessory buildings;
- Development on the site is required to meet Height, Bulk, Area, and Density requirements for the (FR) Zoning District, in addition to other ordinance specifications and obtain proper permitting;

- (C) Granting the conditional use shall not conflict with the general purposes of the Zoning Ordinance or with the goals and objectives the Comprehensive Plan;**

Findings:

- The zoning ordinance allows for the proposed Wireless Communications Facility (WCF) as a conditional use in the (FR) zone;
- The Comprehensive Plan designates the site as Farm and Forest;
- The description of the Comprehensive Plan’s Farm and Forest designation is provided in this report;
- The Forest Reserve (FR) Zoning District has a 5.00 minimum lot size requirement;
- The petition site is 11.64 +/- acres;

- (D) The conditional use property can be served with adequate utilities, access streets, drainage and other necessary facilities;**

Findings:

- The conditional use property can be served with adequate facilities;

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- (E) The conditional use shall not involve any element or cause any condition that may be dangerous, injurious or noxious to any other property or persons, and shall comply with performance standards delineated in this ordinance;**

Findings:

- See findings under (B);
- The petitioners will be required to comply with the Performance Standards set forth in Chapter 802-4 of the Monroe County Zoning Ordinance, in addition to other applicable development standards in the ordinance;
- The proposed use will not have an adverse impact on traffic conditions in the area;

- (F) The conditional use shall be situated, oriented and landscaped (including buffering) to produce a harmonious relationship of buildings and grounds with adjacent structures, property and uses;**

Findings:

- The proposed Wireless Communications Facility (WCF) is required to be buffered by landscaping pursuant to Chapter 830 of the Monroe County Zoning Ordinance;
- The proposed facility is located approximately 350 feet from the nearest adjoining residential structure;
- The petition site is adjacent to six (6) parcels, four (4) of which contain an existing residential dwelling according to the County Assessor's records available on Elevate GIS;

- (G) The conditional use shall produce a total visual impression and environment which is consistent with the environment of the neighborhood;**

Findings:

- See findings under (E) and (F);
- The area surrounding the petition site is primarily wooded;

- (H) The conditional use shall organize vehicular access and parking to minimize traffic congestion in the neighborhood; and,**

Findings:

- The petition site gains access off of N Turkey Track Road;
- N Turkey Track Road is a public road classified as a Local Road in the Monroe County Thoroughfare Plan;
- The petitioner has stated the proposed facility will experience occasional maintenance vehicle access and will not result in significant additional traffic;

- (I) All permits required by other Federal, State and local agencies have been obtained;**

Findings:

- According to the petitioner's submittal, AT&T Mobility, LLC maintains all federal, state, and local permits as required to operate a Wireless Communications Facility (WCF);

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- The petitioner is required to obtain necessary building permit(s) and Improvement Location Permit(s) from Monroe County pending approval by the Monroe County Board of Zoning Appeals;

All conditional uses are subject to the criteria established in Section 813-5. Additional criteria as specified in this section must be met by the following categories of conditional use.

(A) Wireless Communications Facilities:

- (1) The proposed facility must comply with Chapter 834 of this Zoning Ordinance;**

Findings:

- The proposed Wireless Communications Facility (WCF) complies with the provisions within Chapter 834 of the Monroe County Zoning Ordinance, with exception to the setback standards. The petitioner has filed a variance request to the setback standards for Wireless Communications Facilities (WCF) with this conditional use;
 -
- (2) The Board shall consider whether a proposed facility minimizes land use impacts by being designed to accommodate future co-location by other users;**

Findings:

- According to the application package for the requested use, the facility will be constructed to accommodate co-location for other wireless providers;
- (3) The Board shall consider the extent to which the WCF has been designed to blend with surroundings and reduce visual impact;**

Findings:

- See findings under (F) and (G) in on the previous page;

QUESTIONS FOR STAFF – 1808-CDU-07 – AT&T

Kaczmarczyk: If you could refresh my memory, what was the one direction that you could see the tower?

Yanke: I believe that was from proposed Interstate 69 or Highway 37 at this point. I would have to go back in the packet to make sure but yes, I believe that was it.

Kaczmarczyk: I was correct in that you actually can't see it at all in the other 3 pictures.

Yanke: The ones that were submitted did not show the cell tower.

Kaczmarczyk: I kind of felt like I was playing some kids game where there is a tower there somewhere and I know I will find it if I keep looking. But it wasn't there. Alright, good to know.

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That is it for my questions. Anyone else have questions for staff? Alright, would the petitioner or the petitioner's representative like to address the Board?

PETITIONER/PETITIONER'S REPRESENTATIVE – 1808-CDU-07 – AT&T

Price: Good evening. For the record my name is Matt Price. I am an attorney for AT&T Mobility with Bingham Greenebaum Doll out of Indianapolis, with an address of 10 West Market Street. With me this evening I have Brian Ramirez with PBM Wireless, which is a site acquisition company that locates sites that are hopefully suitable for the location of wireless support structures like the one proposed here. I met them just this evening but the owners of the property are seated to my immediate right, William and Nancy Pauley. I think the staff report does an excellent job of highlighting the details of the site to kind of refresh a little bit and I can answer the Chairman's question about which direction you can see the tower from relative to the renderings that were provided or the schematic pictures that were taken. It is a monopole design, so it like a cylindrical pole as opposed to some of the lattice structures that are characteristic of some areas on the highway and this area, not all but some. 195 feet with a 4 foot lightening rod at the top. The compound is a 75' by 75' area, so it is a larger area than what is really needed for this one carrier, for AT&T but in compliance with your ordinance, which is a wise provision, the tower is being constructed so that they can accommodate other carriers, which we call and I am sure you are familiar with, co-location. The tower could be shared with another carrier, actually 3 additional carriers could locate and have the ground space for their radio equipment to be located. I will also mention, although it wasn't part of our application, per say, but there is a joint venture or partnership really between first responders organization and AT&T to leverage AT&T's infrastructure so that their infrastructure can house equipment that can be used by first responders and emergency response personnel. That is called FirstNet and you may be hearing more about that in the future. But this infrastructure would be part of that deployment and hopefully help to serve the public's interest in public safety that is made better by reliable wireless communication services. I would also mention just, I will answer the Chairman's question, I believe that the vantage point that it is visible from is from the southeast looking back northwest and so if you are traveling, really traveling north, I guess back towards Indianapolis you can see it off to the northwest. What makes the site a particularly good site is that while it is zoned Forest Reserve and this area is certainly heavily wooded and some undulating terrain, it happens to be an open area, a rare open area in this vicinity. So it can locate the tower or accommodate the tower's location in a way that is screened particularly to the north and the west while at the same time being well removed from the highway so that it has the aesthetic impact of it is really minimized as a result of that and for that reason it is able to comply really well with all of the development standards associated with a wireless structure in Monroe County's ordinance. Brian and I will be happy to answer any questions that you have and respectfully request your approval tonight. Certainly want to thank staff for their guidance in getting us to this point. Thank you.

Kaczmarczyk: Thank you Mr. Price. Any questions for Mr. Price from the Board?

Clements: Just recalling what I know from the last time we had a cell phone approval, because it is under 200 feet, there will be no lights?

Price: Correct.

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Clements: Ok, that is nice.

Kaczmarczyk: Any other questions? Alright, I think we are all set here. Thank you very much. Is there anyone else here tonight who would like to speak in favor of the petition? Seeing none. Is there anyone here tonight who would like to speak in opposition to this petition? Seeing none once again. In that case, further discussion, motion, small talk?

SUPPORTERS – 1808-CDU-07 – AT&T: None

FURTHER SUPPORTERS –1808-CDU-07 – AT&T: None

REMONSTRATORS –1808-CDU-07 – AT&T: None

ADDITIONAL QUESTIONS FOR STAFF –1808-CDU-07 – AT&T: None

FURTHER QUESTIONS FOR STAFF – 1808-CDU-07 – AT&T

Clements: I really commend them for finding such a location that is unobtrusive and inoffensive and I think it looks like a great spot for such a telecommunication relay point, yeah.

Kaczmarczyk: Real quick, actually before we have a motion. I just want to check with staff, you gave us an updated copy of the findings of fact. I am assuming the only change is that reference to setbacks which I had noted was a little off.

Yanke: Correct.

Kaczmarczyk: Alright, Thank you. Any other comments or does anyone want to make a motion?

McNeil: I will make a motion. On case number 1808-CDU-07, Conditional Use Variance for a Wireless Communication Facility, I would move that we approve the Conditional Use based upon the amended findings of fact in the handout.

Clements: I **second** it.

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

Wilson: Ok, the vote is on petition 1808-CDU-07, AT& T Conditional Use for a WCF. A vote in favor is a vote to approve the Conditional Use based upon the submitted findings. Michael McNeil?

McNeil: Yes.

Wilson: Susie Johnson?

Johnson: Yes.

Wilson: Margaret Clements?

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Clements: Yes.

Wilson: Peter Kaczmarczyk?

Kaczmarczyk: Yes.

Wilson: The Conditional Use is approved 4 to 0.

The motion in case 1808-CDU-07, AT&T Mobility Conditional Use for Wireless Communications Facility (WCF), Chapter 813, in favor of approving the variance with the amended findings presented in the packet, motion carried unanimously (4-0)

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NEW BUSINESS

- 5. 1808-VAR-25 Northern Monroe Fire Territory Use Variance to Chapter 802**
One (1) 28.37 +/- acre parcel in Washington Township, Section 15 at 8768 N Wayport Rd. (Former address: 8768 N State Road 37).
Zoned PB/AG/RR.

BOARD ACTION: Kaczmarczyk introduced the petition.

STAFF ACTION:

Wilson: I am covering this, as you may be aware Carly Petersen has left us for the bright lights and big city of Chicago to do work for a consulting firm up there and she has relocated and started her new job, so I am covering this tonight. This is a petition for a Use Variance, petition 1801-VAR-25, from the Northern Monroe Fire Territory. It is a Use Variance under Chapter 802 for a 28.37 acre parcel in Washington Township, located at 8768 North State Road 37. This is the former location of the sheet metal, Poynter Sheet Metal Facility. There is the location. It is partially zoned Agricultural/Rural Reserve, partially zoned PB. The property in which the use variance would impact is zoned Pre-Existing Business. Here is the Comprehensive Plan. There is the overall view of the site. There is some problems on the site but there is buildable area where this will be located. Here is the slope map. The slopes in red are the steep slopes. There is a site plan which should be in your packet. The basic proposal is to utilize a portion of one of the three buildings on this site for a fire station and placement of a temporary manufactured home for 24 months. One of the conditions is that if it extends beyond 24 months they would come back to the Board of Zoning Appeals for continuation. A fire station is only allowed under ordinance in the areas we have zoned for Government Facilities zone and there are only a few of those around. Because when they did the ordinance just like the Suburban Residential zones they identified areas where there are governmental facilities and zoned them for that. This is zoned PB. Here is the building and our recommendation is to approve this Use Variance for a Temporary Governmental Facility as a Fire Station, based on the findings of fact and subject to the following conditions;

- 1) Maximum duration for the placement of the temporary manufactured home shall be 24 months.
- 2) The maximum duration for the temporary use of the property as a fire station shall be 24 months.
- 3) Any request for extension of the duration of the temporary use of the property shall come back before the Board of Zoning Appeals.

With that we are again, recommending approval of the Use Variance, which is something that we do not do often but in this case it seemed like a reasonable use and it will allow them to continue operations while they build a new fire station. I believe they are in the audience tonight to come forward.

RECOMMENDED MOTIONS

Approve the use variance for a temporary Government Facility (Fire Station) to Chapter 802, based on the findings of fact, and subject to the following conditions:

1. The maximum duration for the placement of the temporary manufactured home shall be 24 months.

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2. The maximum duration for the temporary use of the property as a fire station shall be 24 months.
3. Any request for extension of the duration for the temporary use of the property shall come back before the Board of Zoning Appeals.

FINDINGS OF FACT: Use Variance

812-5 Standards for Use Variance Approval: In order to approve an application for a use variance, the Board must find that:

(A) The approval will not be injurious to the public health, safety, and general welfare of the community:

Findings:

- Approval of the use variance would allow the expansion of the uses on the petition site to include “Government Facilities” (Fire Station);
- Approval of the use variance would also allow the placement of a temporary manufactured home for use by the fire station;
- The character of the district is rural areas adjacent to State Road 37/Interstate 69, with limited pre-existing businesses, including the metal fabricator located on site;
- The adjacent uses on the east side of I-69 include forested areas, and a single family dwelling to the south;
- There is a small, dammed lake on the north part of the site, with a tributary that flows to Buck Creek; The petition site is not located in FEMA Floodplain;
- There are no known karst areas on the lot;
- The steep grade on the site does not impact the area proposed for the Fire Station use;
- The site has direct access to N Wayport Road, a new Interstate frontage road, which is classified as a Major Collector;
- The approved use would not have a negative impact on traffic circulation in the area;
- The Health Department has approved the proposed septic connection for the manufactured home;
- Fire Stations are a public good that protect the public health, safety, and general welfare of the community;
- Conclusion: The approval would not be injurious to the public health, safety, and general welfare of the community.

(B) The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner:

Findings:

- See Findings under (A);
- Approval of the use variance would permit the issuance of an

Improvement Location Permit for the manufactured home to be used by the fire station;

- The immediate area is sparsely populated and surrounded by state managed forested areas to the east;
- The last County assessment of the property in 2018 was a total assessed value of \$ 1,415,300.00 under the class of Light Manufacturing & Assembly;
- The average total assessed value within a quarter mile area is \$ 163,592.50;
- The effect of the approval of the use variance on property values is difficult to determine, however it is unlikely that it will have a lower total assessed value than the current appraisal;
- Fire station proximity could improve the value of adjacent properties due to improved fire security;
- Conclusion: The use and value of the area adjacent to the property included in the variance may or may not be affected in a substantially adverse manner.

(C) The need for the variance arises from some condition peculiar to the property involved: Findings:

- The petition site is zoned Pre-Existing Business (PB) and Agriculture/Rural Reserve (AG/RR), and all structures for the site are located in the PB portion of the lot;
- The current use of the property is Metal Fabrication (High Intensity), which is a grandfathered use in the PB zone;
- The site may qualify for a change of use a multi-use Business/Industrial Center or Commercial/Industrial Adaptive Reuse, however the Government Facility use is not eligible in a Multi-Use use;
- Chapter 803 states that no legal, pre-existing nonconforming use of land and/or structure may be enlarged, moved or otherwise changed, except that such use may be changed to permitted use, unless a variance from the terms of the ordinance is obtained from the Board;
- PB zone is identified for the purposes of maintaining commercial activities with business zoning, while at the same time not allowing for the expansion of new business activity proximate to the location of the PB District;
- It has been determined that only uses permitted under Business and Personal Services and Retail and Wholesale Trade categories and permitted in the Limited Business (LB) and General Business (GB) Zones would be considered conforming in the PB zone, or would qualify for a legal change of use;
- Changing the use of the petition site to include a temporary “Government Facility” thus requires the variance to be filed;
- The petitioner seeks a temporary use for the petition site to operate a fire station from an industrial building and a manufactured home;
- A rezone of the property would not permit the proposed use occur on the property with the simultaneous operation of the Metal Fabrication use;

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- There are no environmental constraints/conditions peculiar to the property;
- Conclusion: The need for the variance does arise from some condition peculiar to the property involved in that the use of the property is a pre-existing, non-conforming use in the Pre-Existing Business (PB) zone;

(D) The strict application of the terms of the Zoning Ordinance will constitute an unnecessary hardship if applied to the property for which the variance is sought; and,

Findings:

- See Findings under (C);
- Government Facility uses are permitted in the following zones: AG/RR, FR, CR, ER, LR, MR, HR, UR, LB, HI, IP;
- If denied, the petitioner could not operate a fire station on site because Chapter 803-1(A) states that, No legal, pre-existing nonconforming use of land and/or structure may be enlarged, moved or otherwise changed, except that such use may be changed to permitted use, unless a variance from the terms of the ordinance is obtained from the Board;
- The Monroe County Zoning Ordinance defines: Hardship or Unnecessary Hardship as: Significant economic injury that:
- Arises from the strict application of this ordinance to the conditions of a particular, existing parcel of property;
- Effectively deprived the parcel owner of all reasonable economic use of the parcel; and
- Is clearly more significant than compliance cost or practical difficulties.
- Fire Stations are a public good that protect the public health, safety, and general welfare of the community;
- Conclusion: Strict application of the terms of the Zoning Ordinance may be more significant than compliance costs for the operation of the fire station on the petition site, due to the temporary nature of the operation and the derived public good of a nearby fire station for the community;

(E) The approval does not interfere substantially with the Comprehensive Plan. Especially, the five (5) principles set forth in the Monroe County Comprehensive Plan:

- (1) Residential Choices;**
- (2) Focused Development in Designated Communities;**
- (3) Environmental Protection;**
- (4) Planned Infrastructure;**
- (5) Distinguish Land from Property;**

Findings:

- See Findings under (A);

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- The Comprehensive Plan designates the subject site as Rural Residential, which is described previously in this report;
- Rural Residential areas include rural property, environmentally sensitive areas, and areas adjacent to quarry operations where low densities are appropriate and desirable;
- Fire Stations are a public good that protect the public health, safety, and general welfare of the community;
- Fire Stations are planned infrastructure investments that are a principle of the Comprehensive Plan;
- Conclusion: The approval does not interfere substantially with the Comprehensive Plan. Especially, the five (5) principles set forth in the Monroe County Comprehensive Plan.

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 – 1808-VAR-25 – Northern Monroe Fire

Kaczmarczyk: Thank you, Larry. The petitioner might be able to answer this, I was surprised it didn't say anywhere in the packet why there is this need. Is the other....

Wilson: My understanding I believe I-69 go the other fire station. Is that...no is there a different need? Go ahead.

**PETITIONER/PETITIONER'S REPRESENTATIVE –
1808-VAR-25 – Northern Monroe Fire**

Kaczmarczyk: Yeah, if you are the petitioner or the petitioner's representative. You are the petitioner or the petitioner's representative?

Henegar: Lillian Henegar Bloomington Township Trustee. Bloomington Township is a provider unit....

Kaczmarczyk: I do need to swear you in, I do believe. Lillian Henegar, do you swear or affirm to tell the truth and nothing but the truth?

Henegar: I do.

Kaczmarczyk: Thank you. Now you can go right ahead.

DRAFT

Henegar: We are the provider unit for the Northern Monroe Fire Territory, which we established the territory about 2016. The plan at that time was to build a fire station in Washington Township, which the territory is comprised of Bloomington Township and Washington Township. One thing or another, problems have occurred in terms of building the building. Cook has provided us with the property which is what you are thinking of off of I-69 at the Brown School. I don't know if you are familiar with that area. It is on hold at the moment. But during this time the fire chief and the deputy chiefs have been looking for a spot where we could have a temporary station so that while we are building this new stations we could have a temporary station to improve the service, to reduce the response times is really important. We found and it has not been easy to find a good spot for either the permanent station or the temporary station and this opportunity came up and so we have worked on it. We need to have, to have it work properly we need it to be 24-7 staffed by firefighters which is part of the issue I think. Besides we will have 3 pieces of apparatus trucks there. Does that help answer the question?

Kaczmarczyk: Absolutely and if I had been paying more attention to my local news I probably would have known the answer. But I appreciate having it here on the record. Any questions for Ms. Henegar? Alright, I think we are good. Thank you. Is there anyone else here who would like to speak in favor of this petition? Is there anyone here who would like to speak in opposition to this petition? Seeing a whole lot of nothing. I will entertain discussion, a motion, etcetera, etcetera, etcetera.

SUPPORTERS –1808-VAR-25 – Northern Monroe Fire: None

FURTHER SUPPORTERS –1808-VAR-25 – Northern Monroe Fire: None

REMONSTRATORS –1808-VAR-25 – Northern Monroe Fire: None

ADDITIONAL QUESTIONS FOR STAFF –1808-VAR-25 – Northern Monroe Fire: None

FURTHER QUESTIONS FOR STAFF – 1808-VAR-25 – Northern Monroe Fire

Clements: To me, it looks like an ideal site and I really commend the township for coordinating with other community members and businesses to find such a location to get sponsorship and to help improve public safety. I think it is a great initiative.

Johnson: **I will make a motion that we approve variance 1808-VAR-25, the Northern Monroe Fire Territory Use Variance with the findings of fact as presented by staff.**

Kaczmarczyk: And **including the 3 conditions?**

Johnson: **Yes.**

Kaczmarczyk: Alright and including the 3 conditions.

McNeil: **Second.**

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

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Wilson: The vote is on petition 1808-VAR-25, a Use Variance for the Northern Monroe Fire Service. A vote in favor is a vote to grant the use variance at the location described. Susie Johnson?

Johnson: Yes.

Wilson: Margaret Clements?

Clements: Yes.

Wilson: Peter Kaczmarczyk?

Kaczmarczyk: Yes.

Wilson: Michael McNeil?

McNeil: Yes.

Wilson: The use variance is granted 4 to 0.

The motion in case 1808-VAR-25, Northern Monroe Fire Territory Use Variance to Chapter 802, in favor of approving the variance with the conditions and commitment attached to the motion carried unanimously (4-0)

DRAFT

REPORTS:

Planning/Wilson: No report

Legal/Schilling: No report

The meeting adjourned at 7:20 P.M.

Sign:

Attest:

Peter Kacmarczyk, Chairman

Larry J. Wilson, Secretary

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