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**BOARD OF ZONING APPEALS
Regular Meeting Minutes
November 7, 2018 - 6:00 p.m.**

CALL TO ORDER

ROLL CALL

INTRODUCTION OF EVIDENCE

APPROVAL OF AGENDA

APPROVAL OF MINUTES

September 10, 2018

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

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

ABSENT: Susie Johnson

STAFF PRESENT: Larry Wilson, Director, 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 September 10, 2018 minutes, carried unanimously.

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OLD BUSINESS:

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

NEW BUSINESS:

- 1. 1808-VAR-27 Wetzel Minimum Lot Size Variance to Chapter 804**
One (1) 0.86 +/- acre parcel in Perry Township, Section 30 at 5580 S Victor PIKE. **Zoned ER.**
- 2. 1809-VAR-28 J. Empire Boat Storage Use Variance to Chapter 802**
One (1) 1.20 +/- acre parcel in Perry Township, Section 32 at 6935 S Old State Road 37 (Parcel No. 53-08-32-400-028.000-008). **Zoned LI.**
- 3. 1809-VAR-29 Eads Minimum Lot Width Variance to Chapter 804**
One (1) 3.55 +/- acre parcel in Clear Creek Township, Section 8 at 7561 S Old State Road 37. **Zoned AG/RR.**
- 4. 1809-VAR-30 Rushton Minimum Lot Size Variance to Chapter 804**
One (1) 2.28 +/- acre parcel in Benton North Township, Section 27 at 8015 E Northshore Dr. **Zoned FR.**
- 5. 1809-CDU-08 Mt. Ebal Church Historic Adaptive Reuse Conditional Use, Chapter 813**
One (1) 1.00 +/- acre parcel in Clear Creek Township, Section 23 at 8700 S Fairfax Rd. **Zoned SR/ECO1/HP Overlay.**
- 6. 1809-VAR-31 Dickerson / Kelley Minimum Lot Size Variance to Chapter 804**
7. 1809-VAR-32 Dickerson / Kelley Lake Setback Variance to Chapter 825
One (1) 1.38 +/- acre parcel in Clear Creek Township, Section 24 at 8041 E Hardin Ridge Rd. **Zoned FR/ECO1.**
- 8. 1809-VAR-33 Deckard / Mann Buildable Area Variance to Chapter 804**
One (1) 8.01 +/- acre parcel in Polk Township, Section 27 at 9450 S Dutch Ridge Rd (Parcel No. 53-12-27-300-019.000-010). **Zoned FR.**
- 9. 1810-VAR-34 Panozzo Minimum Lot Size Variance to Chapter 804**
One (1) 0.93 +/- acre parcel in Salt Creek Township, Section 21 at E Pine Grove Rd (Parcel No. 53-07-21-400-019.000-014). **Zoned CR/ECO1.**

REPORTS:

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

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OLD BUSINESS

1. 1805-VAR-14

Schopp Conditions for Tourist Home Variance to Chapter 802

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

CONTINUED BY PETITIONER TO 01/02/2019 BZA MEETING

BOARD ACTION: Kaczmarczyk introduced the petition.

STAFF ACTION: Petition has been continued by the petitioner.

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NEW BUSINESS

1. 1808-VAR-27 Wetzel Minimum Lot Size Variance to Chapter 804

One (1) 0.86 +/- acre parcel in Perry Township, Section 30 at 5580 S Victor PIKE. **Zoned ER.**

BOARD ACTION: Kaczmarczyk introduced the petition.

STAFF ACTION:

Yanke: As you mentioned this is a Lot Size Variance to a parcel that is 0.86 acres and the zoning on it is Estate Residential, which requires a 1 acre minimum lot size. Here is the location there with the red parcel south of town. The current zoning map has it as Estate Residential so are the properties north and south of it. The Comprehensive Plan has it as Suburban Residential. The site conditions map is pretty general there. You can see that there is only one structure and what they are proposing is another structure that is kicking in that 1 acre minimum lot size requirement. Some photos here that were taken for the frontage of the road and then just a photo on the top right showing you the existing residence on the lot. Here is an aerial overview and then the site plan with that slope there. The structure that is being proposed is meeting development standards and it is outside of the 15 percent slope threshold. Public Works had no comments on this petition and based on that the recommendation is to approve the Design Standards Variance based on the findings of fact for the Lot Size.

RECOMMENDED MOTION:

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

FINDINGS OF FACT: Minimum Lot Size Standard

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

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

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

Findings:

- Approval of the variance would allow the petitioner to construct an accessory structure on the petition site;
- The parcel currently contains a residential dwelling;
- The petition site is zoned Estate Residential (ER) and is 0.86 +/- acres;
- The minimum lot size in Estate Residential (ER) is 1.00 acres;
- The parcel is not platted;
- There is no evidence that the building site is located on sensitive lands;
- There is no known karst on the property;

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- There is no evidence that the building would obstruct a natural or scenic view;
- There are other parcels nearby that are under 1.00 acres in size;
- Conclusion: It would not impair the stability of a natural or scenic area;

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

Findings:

- See findings under A(1);
- The parcel is addressed off of S Victor PIKE, a Local Road;
- Conclusion: It would not interfere with or make more dangerous, difficult, or costly, the use, installation, or maintenance of existing or planned transportation and utility facilities;

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

Findings:

- See findings under A(1) and A(2);
- The proposed structure would meet all design standards for the Estate Residential (ER) Zoning District, with exception to the minimum lot size standard;
- Conclusion: The character of the property included in the variance would not be altered in a manner that substantially departs from the characteristics sought to be achieved and maintained within the relevant zoning district;

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

Findings:

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

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

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

Findings:

- See findings under A(1), A(2), and A(3);

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- Conclusion: The specific purposes of the design standard sought to be varied would be satisfied;

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

Findings:

- See findings under A(1);
- There is no floodplain on site;
- The site is not located in the Environmental Constraints Overlay (ECO) Area;
- Conclusion: It would not promote conditions (on-site or off-site) detrimental to the use and enjoyment of other properties in the area;

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

Findings:

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

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

Findings:

- See findings under (A)(1);
- Conclusion: The approval, including any conditions or commitments deemed appropriate, is the minimum variance necessary to eliminate practical difficulties in the use of the property;

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-27 – Wetzel

Kaczmarczyk: Thank you, Jordan. Any questions for staff? Seeing none. Would the petitioner or the petitioner’s representative like to address the Board? No. Ok. It is certainly not required. I do need to run through, is there anyone on the public who wishes to speak in favor of this petition? Seeing none. Anyone in the public wishes to speak in opposition to this petition? Seeing none. Any discussion or I will entertain a motion.

PETITIONER/PETITIONER’S REPRESENTATIVE – 1808-VAR-27 – Wetzel: None

SUPPORTERS –1808-VAR-27 – Wetzel: None

FURTHER SUPPORTERS –1808-VAR-27 – Wetzel: None

REMONSTRATORS –1808-VAR-27 – Wetzel: None

ADDITIONAL QUESTIONS FOR STAFF –1808-VAR-27 – Wetzel: None

FURTHER QUESTIONS FOR STAFF - 1808-VAR-27 - Wetzel

McNeil: I would like to move on case 1808-VAR-27, the Wetzel Minimum Lot Size Variance to Chapter 804, I would move that we approve the variance based upon the findings of fact.

Clements: I **second** the motion.

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

Wilson: The vote is on petition 1808-VAR-27, Wetzel Minimum Lot Size Variance. A vote in the affirmative is to approve the Lot Size Variance to Chapter 804 for the property located at 5580 South Victor Pike. Margaret Clements?

Clements: Yes.

Wilson: Peter Kaczmarczyk?

Kaczmarczyk: Yes.

Wilson: Michael McNeil?

McNeil: Yes.

Wilson: Mark Kruzan?

Kruzan: Yes.

Wilson: The variance is granted 4 to 0.

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The motion in case 1808-VAR-27, Wetzel Minimum Lot Size Variance to Chapter 804, in favor of approving the variance with the conditions and commitment attached to the motion, carried unanimously (4-0).

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NEW BUSINESS

2. 1809-VAR-28

J. Empire Boat Storage Use Variance to Chapter 802

One (1) 1.20 +/- acre parcel in Perry Township, Section 32 at 6935 S Old State Road 37 (Parcel No. 53-08-32-400-028.000-008). **Zoned LI.**

BOARD ACTION: Kaczmarczyk introduced the petition.

STAFF ACTION:

Wilson: I am going to handle this for Tammy tonight the best that I can. This is a petition for a Use Variance as opposed to what we typically deal with which is a petition for a Development Standards Variance. This is for a 1.20 acre parcel in Perry Township at 6935 South Old State Road 37. The current zoning is LI, which is Light Industrial. There is the location. You probably recognize this lot, it is the lot that has perpetually had the semi-trailer with Moore's Restoration on it parked there, just south of Empire Road with entry off of Empire Mill Road. As I said, the zoning of this property is currently Light Industrial, as is the property to the immediate north. It abuts State Road 37 but, again, the access is through Empire Mill Road. The Comprehensive Plan shows this as Employment, which means that when the new zoning ordinance comes about we will be looking to probably zoning this for some type of Employment use. Here are the details of the lot. It is a fairly flat lot. There is a paved area which I think is a formal foundation which they intend to use to store boats on. These are pictures of the lot. The upper left is from the road that it derives access for. There is the proposed site plan which would have boat storage along the side adjacent to 37 and along the north side of the lot. When we evaluate a Use Variance, basically the criteria for a Use Variance is somewhat different than for a Development Standards Variance, whereas the Development Standards Variance if you note the language requires practical difficulty in utilizing the property. For a Use Variance you have to actually show hardship in utilizing the property. These are the number of uses that are available currently in the Light Industrial district. There is 50 to 60 permitted uses within that district already. There are no comments from Public Works on this project. But our recommended motion on this is to deny the use Variance motion, based upon the findings of fact and to summarize those findings of fact, first of all, there is adequate uses in Light Industrial. For a vacant lot in Light Industrial, there is no hardship that would necessitate a Use Variance in order to utilize the property. All of these uses are available in Light Industrial. Secondly, our Comprehensive Plan shows this as Employment and convenient storage, boat storage, RV storage and so on are really not Employment uses. That's why boat storage right now is not within the Light Industrial uses. When they passed the ordinance they limited boat storage to Limited Business which are areas around Lake Monroe and in recreation which are also areas around Lake Monroe. But it technically does not meet our criteria for our Comprehensive Plan which is Employment. It is an economic use but it doesn't create jobs. So, again, our recommendation is to deny the variance based upon the finding of facts in that there is no practical difficulty in that there are numerous other uses that the property can be placed under.

RECOMMENDED MOTION

Deny the use variance (Boat Storage) to Chapter 802 based on the findings of fact.

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:

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(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 petitioner to build storage units for boats;
- The proposed use on the property would require full compliance under a commercial site plan filing;
- The property derives access from S Empire Road, which is a local road;
- The petition site is not located in FEMA Floodplain;
- There are no known karst areas on the lot;
- 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 a filing to obtain site plan approval for the proposed boat storage use;
- The Monroe County Public Works Department and Monroe County Planning Department review site plans to confirm uses are meeting development standards on subject property in the county;
- The effect of the approval of the use variance on property values is difficult to determine;
- The neighboring uses on S Empire Rd are commercial and residential in nature;
- 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 use of “Boat Storage” is not a permitted use in the Light Industrial (LI) Zoning District, thus requiring the variance to be filed;
- The Light Industrial (LI) Zoning District permits a similar use, convenience storage. However, since this lot is located within 500 feet of State Road 37, the convenience storage use would not be permitted without a variance;
- The site has an existing foundation that was once a utility substation;
- There is no substantial evidence the property cannot be utilized under one of the permitted uses listed in the Light Industrial (LI) zoning district;
- Conclusion: The need for the variance does not arise from some condition peculiar to the property involved.

(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;

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and,

Findings:

- See Findings under (C);
- Boat storage is also permitted in the Limited Business (LB) Zoning District per Chapter 802;
- The Light Industrial (LI) zoning district permits 77 uses per Chapter 802;
- Conclusion: The strict application of the terms of the Zoning Ordinance will not constitute an unnecessary hardship if applied to the property for which the variance is sought.

(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);
- The Urbanizing Area Plan designates the subject site as Employment, which is described previously in this report. The neighboring residence is also zoned Employment in the MCUA plan;
- There is a ravine area on the southwest side of the property. The area outside of setbacks does not have any environmental constraints;
- The proposed use and its “Medium” intensity classification is consistent with the Comprehensive Plan’s designation;
- The submitted findings in the petitioner’s application (see Exhibit 1) assert that the proposed use will not stress existing infrastructure and will not impact the surrounding environment;
- Conclusion: The approval does 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.

NOTE: The Board must establish favorable finding for ALL FIVE criteria in order to legally approve a use variance.

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QUESTIONS FOR STAFF –1809-VAR-28 – J. Empire

Kaczmarczyk: Thank you Larry.

Wilson: I am glad to answer any questions.

Kaczmarczyk: I wanted to ask you, you touched on it just now when looking at the 5 principals set forth in the Monroe County Comprehensive Plan I was going to ask you to elaborate on exactly how you concluded that it does interfere substantially with the Comprehensive Plan. Now I got the impression that part of that had to do with the Employment aspect. Is that the primary reason? Because it wasn't clear to me based on the findings of fact how you drew the conclusion that it does interfere substantially. Its page 36. I know you were kind of learning this on the fly, I think.

Wilson: I see what you are saying here. What's in black is basically what has to be found by the Board of Zoning Appeals to grant a Use Variance and below is what we have basically stated that the Urbanizing Area Plan designates this as Employment. We probably will have areas designated for Convenience Storage and basically non-employment type uses. One other thing that is in Tammy's report is Convenience Storage is permitted in Light Industrial but would not be permitted on this site because we do not allow it within a 500 feet of State Road 37. Again, the theory behind that was you did not want to utilize all of this prime space for a use that didn't generate employment. Again, that is part of the original zoning ordinance.

Kaczmarczyk: That certainly provided me a little more clarity.

Wilson: Ok. It is basically a question of, if you look at the Comprehensive Plan where it talks about Employment it talks about creating jobs and having the necessary infrastructure to create jobs. That is why the use is not a permitted use in Light Industrial at present.

Kaczmarczyk: Ok, thank you. Any other questions for staff? Michael?

McNeil: How is a Parking Facility different than a Boat Storage Facility?

Wilson: What kind?

McNeil: A Parking Facility which is a permitted use different than parking boats.

Wilson: We have a definition for Boat Storage Facility that is more defined than a Parking Facility, so that is have we classify Boat Storage. I believe the definition for Parking Facility is as an Adjacent Use or an Accessory Use typically. I think Parking Facility in the ordinance and again, that is the reason we are updating the ordinance, it is possible that these facilities might be allowed in the new ordinance in Light Industrial. But a Parking Facility I think was intended to be a Commercial Parking Lot or a Commercial Parking Garage. I think that really is what that definition is intended to be. We have these definitions all that time where we say, well, it really is this. But if you have a definition in the ordinance, which we do for Boat Storage Facility that is precise, that says Boat Storage Facility, you really can't argue that it is some other use.

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McNeil: How is a Boat Storage Facility different than a Warehousing Facility?

Wilson: You have a definition for Warehousing which is for the movement of goods and storage of property and we have a definition for Boat Storage Facility. We define Boat Storage facility in the ordinance and say these are the areas in which it can go.

McNeil: It just seems...

Wilson: If somebody wanted to have a facility to as a say, wholesaler and wanted to store boats, as a warehousing situation, then that would be Warehousing. But when you rent individual spaces boat owners to store their boats that is a Boat Storage Facility under our ordinance. That doesn't mean you cannot have a facility that has boats on it if it was wholesale. Boat storage is outside storage. It is allowed to be outside storage under Boat Storage Facility. Warehousing would not be outside storage.

Kaczmarczyk: Mark, do you have a question?

Kruzan: It sounds to me like you are making the distinction between employment generating or supporting use versus not. Is that accurate that a Parking Facility, car or garage or lot is going to be adjacent to, supporting employment generating business, is that accurate?

Wilson: The distinction is there may well be uses in the Light Industrial that does meet the current updated plan criteria for Employment. This is a new designation that's 2 years old, Employment, so you can't really go through our ordinance right now and say it doesn't meet the requirement of the Comprehensive Plan. The new ordinance would be required to meet the requirements of the Comprehensive Plan. In this case when you make a decision on a Use Variance, you are obligated to look at the Comprehensive Plan as to what it says. So, it's really a new decision. This particular petition doesn't meet the Comprehensive Plan. That doesn't mean that everything in the ordinance is consistent with what the Comprehensive Plan says now.

Kruzan: Even if it did make the Comprehensive Plan you are saying that there are 2 are criteria that are not met.

Wilson: Right, whether it is a hardship, whether there is no other use you can put this property through rather than Boat Storage.

Kruzan: You are saying right now there is 3 out of 5 strikes even without....

Wilson: Even one strike.

Kruzan: I am going to go back Comprehensive Plan anyway, even if this was a Boat Sales location.

Wilson: I think that would come under the 500 foot setback from State Road 37. Auto Dealerships, Auto Repair, Vehicle Dealerships are all prohibited from that corridor.

Kruzan: That is kind of where I am headed. This isn't Auto Sales and I am just wondering in this

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instance it kind of sounds like you are saying if you are selling boats that is like selling cars. But if you are storing boats that is not like storing cars. To Michael's question about automobiles using it, the answer is these are boats and I get that. But if it's the sales site and you are selling cars, how is that then, you are now bringing boats and saying they are the same as cars in that scenario. But not the same in Michael's question.

Wilson: I guess what I saying about Boat Storage Facilities, it's defined specifically by the ordinance and the districts in which it is allowed is set forth in the ordinance. You can't really go past the definition and say well, it's similar to that why can't it be in that district. I think the bottom line in Use Variances, we always will oppose a Use Variance. Because the proper procedure to follow if the ordinance is not working in this case and Boat Storage should be allowed at that location is to amend the zoning ordinance to allow Boat Storage in Light Industrial, not to grant Use Variances individually but to allow everybody in Light Industrial to have that usage. That is the philosophy behind our opposition to a Use Variance. Otherwise it would become sort of who gets the BZA to agree to their Use Variance.

Kruzan: Thank you.

Clements: Could I just ask, at the beginning it says they will not be using this Boat Storage Facility to conduct repairs, but only as necessary they will conduct repairs. Is that considered Employment or no? It is no page 20. Boat Repair Services in accompanying sales of repair merchandise is allowed only as an Accessory Use.

Wilson: I think that is the use if you have a Boat Storage Facility right now.

Clements: I see.

Wilson: If you open a Boat Storage Facility in a Limited Business district or received a Conditional Use to operate a Boat Storage Facility in Recreational zone, those would be the conditions you would be allowed to follow.

Clements: I see. Ok.

Wilson: Those I think were put in there just to illustrate what the conditions are.

Kaczmarczyk: Thank you. Any other questions for staff at this time?

Wilson: I will update the BZA as far as this, I think the new ordinance will address this issue. We have demand for additional boat storage. We have demand for rv storage. Many communities are trying to figure out how to deal with these vehicles. It is becoming increasingly difficult because a number of communities are banning these from residential neighborhoods. You can't have an rv on your residential lot or a boat on your residential lot and so there is a demand for storage. The question I think is for the Plan Commission and the Commissioners in updating the ordinance, where do you want these facilities to be?

Kaczmarczyk: Thank you Larry. Would the petitioner or the petitioner's representative like to

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address the Board? If so, come on up. Hopefully, there is a pen and a piece of paper there. If you could sign your name.

PETITIONER/PETITIONER'S REPRESENTATIVE – 1809-VAR-28 – J. Empire

Paul: Good evening, I am John Paul.

Kaczmarczyk: I will need to swear you in, sir, before we get going. Could you raise your right hand and state your name again, please?

Paul: John Paul.

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

Paul: Yes.

Kaczmarczyk: Thank you. Please go right ahead.

Paul: I am the petitioner for this project and I can appreciate what you are saying. But I would come back with its odd that I can have a boat repair business here but I can't store the boats there. It's odd that I can work on small engines there but I can't store the boats there. So, I understand where you are coming from and when I talked to Jackie about it, it is kind of a not sure what to do with this boat and rv storage. I can appreciate that but it is odd to me, not being familiar with what goes on daily that you can't store boats but you can repair boats. According to what you guys are saying I can put a stock yard there, which I think the neighbors would much rather see a storage business than a stock yard. As far as the employment, I guess eventually I would work there when I retire. But I can't help it that it don't employ that many people.

Kaczmarczyk: Thank you sir. Does anyone have any questions for Mr. Paul?

McNeil: Mr. Paul, you have my sympathies. Sometimes the law, well, doesn't seem very intelligent. But it seems like to me in this case it's a question of applying the law and the exceptions. We can't be a Board that makes up the law as we go along and you have my sympathies.

Paul: I haven't really seen an argument why it can't be put there, really.

Kaczmarczyk: Well, I think the basic argument is because that is the way the laws are currently written and I agree with Michael it seems awful peculiar to me but the reason is that is what is in black and white and that is the reason.

Paul: But I can put a Boat Repair Facility there.

Wilson: And there would be limits on the outside storage as far as screening the boats.

Paul: I am willing to meet those anyway.

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Wilson: Right. As long as you do a repair facility, I believe that is allowed in that zone.

Paul: Why don't I just say I have a boat detailing business there too?

Wilson: I don't have the ...

Paul: Where do you draw the line as to what is storage and what is repairs?

Wilson: Our limitation is we just basically administer the ordinance. We don't always agree with the ordinance. We don't always think it makes sense. But our obligation is to follow the ordinance. If the use is permitted in a Light Industrial zone and you meet the conditions for it, you are entitled to that Light Industrial use. There are 50 to 60 Light Industrial uses which are permitted on that lot, provided that you can meet the conditions. Unfortunately, for the proposal you have Boat Storage is not one of them. Now, should the Plan Commission make a recommendation to the Commissioners or the Commissioners as that the ordinance be changed to allow Boat Storage in Light Industrial then it would become a permitted use and you could do that. But right now the ordinance does not allow for boat storage as one of the uses.

Paul: I thought that was what the appeals process was for. I am appealing to you.

Wilson: You are asking for a Use Variance.

Paul: Right.

Wilson: You are appealing our decision.

Paul: Right.

Wilson: But in order to evaluate the appeal, the Board of Zoning Appeals is obligated to follow state law and our ordinances in granting a Use Variances.

Paul: But so far no one has said, you know, it doesn't really make any since that you couldn't put this there. They have said we have to follow the law but it doesn't make any sense why it can't be put there. So, that is not a very good explanation to me.

Kaczmarczyk: Well....

McNeil: You have my sympathies.

Kaczmarczyk: Yeah, I will tell you, you know, we are supposed to follow the ordinance and we have certain guidelines that we look at that are the findings of fact and if those findings fact show us that the application of the ordinance in this case is onerous or creates a hardship or otherwise just seems completely unreasonable based on those criteria, then we are in a position to grant the Use Variance that you are requesting. From what we have looked at so far, we are bond by the ordinance and when we look at those 5 criteria, we don't see your case meeting those 5 criteria which allow us to say we are going to ignore the ordinance in this case. We may still have some

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discussion but we are bound by the ordinance unless we can check certain boxes that say we can supersede the ordinance in this case and it doesn't appear that we can check those boxes legitimately.

Paul: So, after tonight then I just come up with a new game plan as to what to do with the property.

Clements: I don't think you even have to come before us for a small engine repair shop or a boat repair shop. I don't think he would have to come before us, is that correct?

Wilson: Again, I don't have the uses in front of me in detail with all of the conditions.

Paul: I have here it says, automotive boat repair shop.

Clements: So, if that is a permitted use....

Wilson: It is a permitted use with conditions placed upon those uses that are also in the ordinance.

Paul: Ok.

Wilson: It is basically you file a site plan and get a Building Permit for the building for it and you are good to go.

Kruzan: So someone from staff or someone from staff and legal could sit down with Mr. Paul and go over exactly what the requirements are or have him hire an attorney to do it.

Wilson: Go over exactly what the requirements are, yes. You can come in. It is somewhat complicated to do a commercial site plan without an engineer or a surveyor often.

Kruzan: In terms of what the code will allow, that's something you could do.

Wilson: Right, yeah that is something we can do and we can also do a use determination if you have a use that doesn't fit the definition. We try to put it in the proper category and the proper definition. We get that all the time too because again, when you have an ordinance that is older, you have uses coming up all the time like electric scooter repair facility. Where would that go? We have new uses and so we try to address those. But updating the ordinance that should help a great deal. The new ordinance will be somewhat more flexible in having less rigid definitions but more broad definitions, so there would be kind of categories of uses that would be allowed depending on the size of the building, the traffic, any sort of external movements of traffic and so on. So it should be a little more flexible. Again, I can't tell you where both storage facility or rv storage facility is going to be but I assume we will address that through the process and also during this ordinance update process, you have an opportunity to come and tell the Plan Commission and tell the Commissioners that you would like to see boat storage and rv storage allowed in more districts.

Paul: When does the new ordinance take effect?

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Wilson: We will hopefully have a draft that will be open for public review in December. We have a website. The name of the website is?

Yanke: Monroecdo.com. But we can get you that information. I know that we will have Jackie, the planner that was working with you, follow up in terms of the other conversation that was mentioned as well.

Paul: Ok.

Kaczmarczyk: Thank you. Any other questions for Mr. Paul? Alright, thank you sir. Is there anyone in the public tonight that would like to speak in favor of this petition? Seeing none. Is there anyone here tonight who would like to speak in opposition to this petition? Seeing none. I will entertain discussion or a motion. Ok, well, I...do you want to go ahead?

SUPPORTERS –1809-VAR-28 – J. Empire: None

FURTHER SUPPORTERS –1809-VAR-28 – J. Empire: None

REMONSTRATORS –1809-VAR-28 – J. Empire: None

ADDITIONAL QUESTIONS FOR STAFF –1809-VAR-28 – J. Empire: None

FURTHER QUESTIONS FOR STAFF - 1809-VAR-28 – J. Empire

McNeil: **In case 1809-VAR-28, Boat Storage Use Variance, I move that we deny the variance based upon the findings of fact, even though I don't really like how the law is being applied here.**

Kruzan: **Second.**

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

Wilson: The vote is on petition 1809-VAR-28, J. Empire Boat Storage Use Variance. A vote in favor is a vote to deny the variance based upon the findings. Peter Kaczmarczyk?

Kaczmarczyk: Yes.

Wilson: Michael McNeil?

McNeil: Yes.

Wilson: Mark Kruzan?

Kruzan: Yes.

Wilson: Margaret Clements?

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Clements: Yes.

Wilson: The Use Variance fails 4 to 0.

The motion in case 1809-VAR-28, J. Empire Boat Storage Use Variance to Chapter 802, in favor of *denying* the variance with the conditions and commitment attached to the motion, carried unanimously (4-0)

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NEW BUSINESS

3. 1809-VAR-29 Eads Minimum Lot Width Variance to Chapter 804

One (1) 3.55 +/- acre parcel in Clear Creek Township, Section 8 at 7561 S Old State Road 37. **Zoned AG/RR.**

BOARD ACTION: Kaczmarczyk introduced the petition.

STAFF ACTION:

Yanke: This is a Lot Width Variance. The parcel is 3.55 acres and it is zoning Agricultural/Rural Reserve. Here is a location map. As you can see, it is quite narrow but it is over the lot size requirement of 2.5 acres. The current zoning map has it as Agricultural/Rural Reserve. The Comprehensive Plan has it as Rural Residential as are the surrounding properties. Here is the site conditions map. It is relatively flat until you get to the eastern portion of the site as you can see there. Here are some photos of the frontage along the road and then the driveway approach. The bottom picture is essentially capturing the relative area of the proposed Accessory Structure. Here you have the aerial view again with the proposed structure going behind the home and then the site plan that was submitted. There were no Public Works comments on this petition. With that and I should mention, the lot size was the first variance tonight, here we have the lot width, which is 200 minimum lot width. Now this property in its entirety is under that, at 139 for the entire area. There is no location on this lot that the structure could be proposed that would eliminate the need for this variance request. With that the recommended motion is to approve the Design Standard Variance for the Lot Width based on the findings of fact.

RECOMMENDED MOTIONS:

Approve the design standards variance to the Minimum Lot Width standard in Chapter 804 of the Monroe County Zoning Ordinance based on the findings of fact.

FINDINGS OF FACT: Minimum Lot Width at Building Line

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;

- Approval of the variance would allow the petitioner to construct a new storage barn on the lot of record;
- The site is zoned Agriculture/Rural Reserve (AG/RR);
- The minimum lot width at building line in AG/RR is 200’;
- The parcel is an existing substandard lot of record at 139’ lot width. The parcel size is 3.55 +/-acre;
- The site currently consists of a single family dwelling and a detached garage;
- The proposed barn would not be constructed on slopes greater than 15 percent;

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- Any new development on the lot, regardless of location, would be subject to minimum lot width variance approval;
- The site is not within the FEMA floodplain;
- The site is adjacent to residential lots and S State Road 37;
- Conclusion: It would not impair the stability of a natural or scenic area.

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

Findings:

- See Findings under Section A(1);
- The site gains access via S Old State Road 37, a road designated as a Minor Collector under the Monroe County Thoroughfare Plan;
- The proposed barn is a permitted use in the Agriculture/Rural Reserve (AG/RR) Zoning District;
- 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);
- Approval of this variance would not result in a development profile associated with a more intense zoning district;
- The comprehensive plan designates this site as Rural Residential;
- The 3.55 +/- acre parcel is a single lot of record;
- Surrounding properties are zoned Agriculture/Rural Reserve (AG/RR) and Suburban Residential (SR);
- There are nearby parcels that do not meet the minimum lot width requirement;
- Without variance approval, the lot cannot be further developed;
- 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

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public health, safety, and welfare concerns raised during the hearing;

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

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

Findings:

- See Findings under Section A(1), A(2), and A(3);
- Conclusion: Approval of the variance would satisfy the design standard sought to be varied.

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

Findings:

- See Findings under Section A;
- Conclusion: It would not promote conditions detrimental to the use and enjoyment of other properties in the area.

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

Findings:

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

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

Findings:

- The parcel is a legal lot of record, and is rendered a substandard lot in terms of lot width;
- The application of the ordinance requires any proposed development to obtain a variance.

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

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ownership of the subject property subject to the provisions and conditions prescribed by or made pursuant to the Zoning Ordinance.

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

QUESTIONS FOR STAFF – 1809-VAR-29 - Eads

Kaczmarczyk: Thank you Jordan. Any questions for staff? Seeing none at the moment. Is the petitioner or the petitioner's representative here and would they like to address the Board? Ok. Well, if we have any we will call you up and swear you in. The petitioner chooses not to speak at this time. Is there anyone here in the public who would wish to speak in favor of this petition? Is there anyone here who would like to speak in opposition to this petition? Seeing none. I will mention to the Board, if you do have any questions of the petitioner, just let us know, otherwise discussion or a motion.

PETITIONER/PETITIONER'S REPRESENTATIVE – 1809-VAR-29 – Eads: None

SUPPORTERS – 1809-VAR-29 – Eads: None

FURTHER SUPPORTERS –1809-VAR-29 – Eads: None

REMONSTRATORS –1809-VAR-29 – Eads: None

ADDITIONAL QUESTIONS FOR STAFF –1809-VAR-29 – Eads: None

FURTHER QUESTIONS FOR STAFF – 1809-VAR-29 - Eads

McNeil: I have a motion. **On case number 1809-VAR-29, Minimum Lot Width Variance, I move that we approve the variance based on the findings of fact.**

Kruzan: **Second.**

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

Wilson: Ok, the vote is on petition 1809-VAR-29, Eads Minimum Lot Width Variance, a Development Standards Variance. A vote in favor is a vote to grant the variance. Michael McNeil?

McNeil: Yes.

Wilson: Mark Kruzan?

Kruzan: You made a very convincing argument. Yes.

Wilson: Margaret Clements?

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Clements: Yes.

Wilson: Peter Kaczmarczyk?

Kaczmarczyk: Yes.

Wilson: The variance is granted 4 to 0.

The motion in case 1809-VAR-29, Eads Minimum Lot Width Variance to Chapter 804, in favor of approving the variance with the conditions and commitment attached to the motion, carried unanimously (4-0)

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NEW BUSINESS

4. 1809-VAR-30 Rushton Minimum Lot Size Variance to Chapter 804

One (1) 2.28 +/- acre parcel in Benton North Township, Section 27 at 8015 E Northshore Dr. **Zoned FR.**

BOARD ACTION: Kaczmarczyk introduced the petition.

STAFF ACTION:

Yanke: This is a Lot Size Minimum. The requirement in Forest Reserve is a 5 acre Minimum. This proposed development since the parcel is 2.28 acres is requiring that Lot Size Variance request. It is located at 8015 East Northshore Drive. Here you have the location, north of Lake Lemon. The zoning and the surrounding properties are Forest Reserve. The Comprehensive Plan has it as Rural Residential. Here is the site plan. As you can see the existing structure is basically in the middle of the property and then the slope map that shows it is all basically under the slope threshold requirement. Some photos again, so the frontage photos of the driveway entrance looking both east and west and then the bottom photo is showing essentially that structure, that small one where the new Accessory or Storage Building will go. An aerial view and the site plan that was submitted by the petitioner showing that it meets all the setbacks. There were no comments from Public Works on this variance request and based on that, the motion is to approve the Design Standard Variance to the Lot Size, based on the findings of fact.

RECOMMENDED MOTION:

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

FINDINGS OF FACT: Minimum Lot Size Standard

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

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

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

Findings:

- Approval of the variance would allow the petitioner to install a storage shed on the petition site;
- The parcel currently contains a residential dwelling and an outbuilding;
- The petition site is zoned Forest Reserve (FR) and is 2.28 +/- acres;
- The minimum lot size in Forest Reserve (FR) is 5.00 acres;
- The parcel is not platted;
- There is no evidence that the building site is located on sensitive lands;
- There is no known karst on the property;
- There is no evidence that the building would obstruct a natural or scenic view;
- There are other parcels nearby that are under 5.00 acres in size;

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- Conclusion: It would not impair the stability of a natural or scenic area;

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

Findings:

- See findings under A(1);
- The parcel is addressed off of E Northshore Drive, a Minor Collector;
- Conclusion: It would not interfere with or make more dangerous, difficult, or costly, the use, installation, or maintenance of existing or planned transportation and utility facilities;

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

Findings:

- See findings under A(1) and A(2);
- The proposed storage shed would meet all design standards for the Forest Reserve (FR) Zoning District with exception to the minimum lot size standard;
- Conclusion: The character of the property included in the variance would not be altered in a manner that substantially departs from the characteristics sought to be achieved and maintained within the relevant zoning district;

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

Findings:

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

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

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

Findings:

- See findings under A(1), A(2), and A(3);
- Conclusion: The specific purposes of the design standard sought to be varied would be satisfied;

(2) It would not promote conditions (on-site or off-site) detrimental to the use and

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enjoyment of other properties in the area (e.g., the ponding of water, the interference with a sewage disposal system, easement, storm water facility, or natural watercourse, etc.); and,

Findings:

- See findings under A(1);
- There is no floodplain on site;
- The site is not located in the Environmental Constraints Overlay (ECO) Area;
- Conclusion: It would not promote conditions (on-site or off-site) detrimental to the use and enjoyment of other properties in the area;

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

Findings:

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

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

Findings:

- See findings under (A)(1);
- Conclusion: The approval, including any conditions or commitments deemed appropriate, is the minimum variance necessary to eliminate practical difficulties in the use of the property;

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

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

QUESTIONS FOR STAFF – 1809-VAR-30 - Rushton

Kaczmarczyk: Thank you Jordan. Any questions for staff? Alright, no questions for staff. Is the petitioner or the petitioner's representative here and would they like to address the Board? Well, would you like to address the Board? Ok, not required. Quick and quiet evening. Is there anyone here who would like to speak in favor of this petition? Seeing none. Anyone here who would like

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to speak in opposition to this petition? Seeing none, once again. I will entertain a motion or discussion.

PETITIONER/PETITIONER'S REPRESENTATIVE – 1809-VAR-30 – Rushton: None

SUPPORTERS –1809-VAR-30 – Rushton: None

FURTHER SUPPORTERS –1809-VAR-30 – Rushton: None

REMONSTRATORS –1809-VAR-30 – Rushton: None

ADDITIONAL QUESTIONS FOR STAFF –1809-VAR-30 – Rushton: None

FURTHER QUESTIONS FOR STAFF – 1809-VAR-30 – Rushton

McNeil: I have a motion. **In case 1809-VAR-30, Minimum Lot size Variance, I move that we approve the variance based upon the findings of fact.**

Kaczmarczyk: I will **second**. We have a motion and a second. Larry?

Wilson: The vote is on petition number 1809-VAR-30, Rushton Minimum Lot Size Variance. A vote in favor is a vote to grant the variance from the minimum lot size requirement. Mark Kruzan?

Kruzan: Yes.

Wilson: Margaret Clements?

Clements: Yes.

Wilson: Peter Kaczmarczyk?

Kaczmarczyk: Yes.

Wilson: Michael McNeil?

McNeil: Yes.

Wilson: The variance is granted 4 to 0.

The motion in case 1809-VAR-30, Rushton Minimum Lot Size Variance to Chapter 804, in favor of approving the variance with the conditions and commitment attached to the motion carried unanimously (4-0)

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NEW BUSINESS

5. 1809-CDU-08

Mt. Ebal Church Historic Adaptive Reuse Conditional Use, Chapter 813

One (1) 1.00 +/- acre parcel in Clear Creek Township, Section 23 at 8700 S Fairfax Rd. **Zoned SR/ECO1/HP Overlay.**

BOARD ACTION: Kaczmarczyk introduced the petition.

STAFF ACTION:

Yanke: As you mention this is a Historic Adaptive Reuse of a historically designated church constructed in 1872 and it is a Conditional Use. The location of the structure and the property is 8700 South Fairfax Road and again it is zoned SR. It is also in the ECO Overlay and the HP Overlay designated in 1981, which is when the Commissioners designated this as historic. You will see the location map there as you go south off of Fairfax and then Mt. Ebal Road goes west from Fairfax Road. The current zoning you will see is Suburban Residential with the ECO Overlay. Surrounding properties are Suburban Residential, Pre-Existing Business with the Fairfax Inn to the north, and then Forest Reserve to the south. The Comprehensive Plan has it as Rural Residential. Here is a site conditions map, it is a 1 acre property, meeting the lot size and there is the historic structure there as you will see in the northeastern portion of the property. Here is the slope map and then several photos. You'll note again the structure is outstanding in the interim report for the county's inventory of historic structures, constructed in 1872. You will notice photos of it in the top left, top right, and bottom left and then the bottom right is the road here, Mt. Ebal Road. The photo on the left is looking from the southeastern portion of the property back at the structure. The photo in the top right is north toward the Fairfax Inn and then the photo on the bottom is looking east across toward the cemetery. There is a better view with the aerial, you will get an understanding of the surrounding area in that photo. Then another aerial pictometry view. Here is a site plan. We actually had a site plan on file when this property was granted a Use Variance in 2012. They will be required to come in and do the necessary, if it's approved, Conditional Use and Non-Residential Commercial Permit and then file an additional site plan for specific approval. But this gives you a sense of what's existing on the property with the vegetation as well, and then another aerial. Public Works Department had no comments on this and with that the recommended motion is to approve the Conditional Use based on the findings of fact. There was support for this from the Historic Preservation Board of Review for the reuse of this structure for this purpose and then Bloomington Restorations Incorporated also submitted a support letter. We did have a note, there had been several discussions in the month leading up to this about longstanding parking being utilized for the cemetery across the road. I had spoken with several people and my Director and we put that note in there to make it clear that the case tonight is about the Conditional Use and the reuse of the structure and not the parking dispute.

RECOMMENDED MOTION

Approve the conditional use request for Historic Adaptive Reuse 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

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Standards for Approval. The Board must find that:

- (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 “Historic Adaptive Reuse” in the Use Table in Chapter 802 of the Monroe County Zoning Ordinance;
- Two conditions are attached to the proposed use in Chapter 802, Conditions 15 and 44;
- Condition 15 reads, “The Plan Commission may attach additional conditions to its approval in order to prevent injurious or obnoxious dust, fumes, gases, noises, odors, refuse matter, smoke, vibrations, water-carried waste or other objectionable conditions and to protect and preserve the character of the surrounding neighborhood.”;
- Condition 44 reads, “Subject to the procedure described in Chapter 813 of the Monroe County Zoning Ordinance.”;
- The petition property is zoned Suburban Residential (SR) and is located in the Environmental Constraints Overlay Area 1 (ECO1);

- (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 use the existing historic Mt. Ebal Church as a *Tourist Home or Cabin*;
- The historic structure was used as a church originally;
- Further development on the site is required to meet Height, Bulk, Area, and Density requirements for the Suburban Residential (SR);

- (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 Historic Adaptive Reuse as a conditional use in the Suburban Residential (SR) zone;
- The Comprehensive Plan designates the site as Rural Residential;
- The description of the Comprehensive Plan’s Rural Residential designation is provided in this report;
- The Suburban Residential (SR) Zoning District has a 1.00 minimum lot size requirement;
- The petition site is 1.00 +/- acres;

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

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Findings:

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

(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:

- The petitioners will be required to comply with the Performance Standards set forth in Chapter 802-4 of the Monroe County Zoning 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:

- Approval of the conditional use will not produce a conflicting relationship between the petition site and its surrounding area;
- The petition site is naturally screened from its adjoining properties to the west and south, while it has road frontage along the northern and eastern property lines;

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

Findings:

- The area surrounding the petition site includes a commercial use to the north, cemetery to the east, and residential or vacant areas to the west and south;

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

Findings:

- The petition site will be accessed off S Fairfax Road, a designated Major Collector;

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

Findings:

- Further development on the site is required to meet Height, Bulk, Area, and Density requirements for the Suburban Residential (SR) Zoning District;

All conditional uses are subject to the criteria established in Section 813-5. Additional

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criteria as specified in this section must be met by the following categories of conditional use.

Historic Adaptive Reuse:

- (1) Property shall have been designated or have filed a petition for Historic designation at the time of the application for a conditional use permit;**

Findings:

- The Monroe County Commissioners approved local historic designation for the petition site on March 30, 1981 (Ordinance No. 134);

- (2) Proposed use shall not diminish the historic character of the property or, if it is located within an historic district, the historic character of said district;**

Findings:

- Historic Adaptive Reuse approval per the petitioner's submitted request will not diminish the historic character of the property;
- The Monroe County Historic Preservation Board of Review has provided its support for the requested conditional use and reuse of the historic structure;

- (3) Proposed use shall enhance the ability to restore and/or preserve the property;**

Findings:

- The proposed use will enhance the ability to preserve the property and reuse its designated historic structure on the site;

- (4) The granting of the conditional use permit shall be contingent upon any required Certificate of Appropriateness and upon the granting of Historic designation;**

Findings:

- Historic designation has been granted for the petition site, meaning all external changes to the building(s) will require Certificate of Appropriateness (COA) approval by the Monroe County Historic Preservation Board of Review;

QUESTIONS FOR STAFF – 1809-CDU-08 – Mt. Ebal Church

Kaczmarczyk: Thank you Jordan. I just have to observe that I realize I was here when we heard this case in 2012 and I have been here a long time know. It just suddenly sunk in now. Any questions for Jordan?

McNeil: What's the current use right now of the property?

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Wilson: The Use Variance was granted back in 2012 for a photo studio, which at the time and this is kind of interesting given our Use Variance case tonight, we granted a Use Variance for it primary because how do you use an old church? It is very difficult to utilize a small church. But also in response to that we added a new section to the ordinance that allows Conditional Uses for historic structures, so it would have to be forced to grant use variance in the future in order to allow a use that in a difficult situation. Again, the ordinance was changed in response to that. I believe it was a use for a photo studio and then converted to a residence which is a permitted use in the district its located and this particular historic use would be use it as a Tourist Home which is not a permitted use in the zone. But would be a permitted use under the Historical Adaptive Reuse criteria.

Kaczmarczyk: I am curious. This is not an enforcement case, is it? Because I know there have been people staying there. That was in the packet.

Yanke: It was sense, yeah, technically there was an enforcement number on the case and that is when we reached out to the property owners.

Kaczmarczyk: Ok.

Yanke: There was technically an enforcement number case on it.

Kaczmarczyk: Alright, good to know. Any others questions for staff? Ok. In that case, would the petitioner or the petitioner's representative like address the Board this evening? Come on up and sign in and then we will swear you in.

PETITIONER/PETITIONER'S REPRESENTATIVE – 1809-CDU-08 – Mt. Ebal Church

Kaczmarczyk: I think I can swear you both in together. If you could both raise your right hands and state your names.

B. Rieman: Brook Rieman.

C. Rieman: Cory Rieman.

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

C. Rieman: Yes.

B. Rieman: I do.

Kaczmarczyk: Thank you. Please go right ahead.

C. Rieman: We purchased this place in 2012 and like Larry said we came to the Board, I do remember you actually, to request this variance to use it as a photography studio. The reason we did that is because at the time of purchase we were excited about it but didn't pay attention to the zoning and then it said on the GIS commercial property. So, we thought ok, we can use it for this

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but after we bought it we realized that what it says on that site doesn't necessarily reflect accurately what it is. It was zoned Residential so we go that variance. We started the photography business was ok but then we started fostering children and long story short, things got hectic so we closed done the photography business. In order to keep using the property because if we didn't use it was just going to go into disrepair and we didn't want to see that again, we plumbed it, we put in a bathroom and kitchen. You saw the packet and pictures in there, bathroom, kitchen, laundry and we started using it as an Airbnb. Because we thought its Residential, it's allowed in Residential areas, we thought. We were naïve I guess. We did that for a little while and we got the cease and desist letter from the county saying, hey, we see that you are using this for this and you can't. We immediately pulled it down from Airbnb. We have been communicating with Jordan the whole time saying we screwed up, what do we got to do to make it right? So, that is why we are here tonight. We have put a lot of work into this place. It was in pretty bad disrepair on the inside for not being used on a consistent basis and we put a lot of effort into restoring it and just a lot of energy into. If we don't, if we aren't able to use it for the Airbnb purposes, then we are just going to use it as a residential rental, which is not ideal for this place. Because I don't want, with renters you never know what you are going to get. With the Airbnb guests that we have had it's been a very positive experience. We are in there every other day or every third day, every week, depending on how, when they leave and we are maintaining it. We are cleaning it. We know if there is a water leak. We know if there is any damage that has been done and we can maintain it more regularly if we are able to use it for this purpose.

B. Rieman: The other thing is the revue from doing Airbnb helps pay to keep the building up which is we live basically we are one of the closest houses to that structure. We live in a house just down the road from the structure, so we used to pass it almost every day, well, we do every day. So, anyway we had seen the condition it was falling into before we purchased it and we wanted to see it revitalized and then we were able to find a use for it. We were able when we used it for a photography studio we were able to produce enough income to do some structural repairs, hire an engineer to do some structural work to fix it. We have repainted it. We have fixed water leaks. We have completely restored the floor, done all kinds of things to make the building stay standing basically. Our thought with doing this Airbnb is it could help fund its life, so that is kind of where we are coming from.

Kaczmarczyk: Thank you and before I entertain questions I just want to say that I drove down there yesterday to see that that oak tree was still there. It is still huge and it still really impressive and I am glad it is still there. Any questions for the petitioners? Ok, no questions for you at this time so thank you very much. Ok, at this time I will ask if there is anyone here who wishes to speak in favor of this petition.

SUPPORTERS –1809-CDU-08 – Mt. Ebal Church

Kaczmarczyk: Anyone who wishes to speak in favor can come on up, we will sign you in and whether you are speaking in favor or opposition to this petition I would again like to remind the public that the issue is parking and whether the choose to allow people to park there for funerals or any other occasion is not before the Board and does not have any bearing on our decision and what we are discussing today. I am willing to entertain a small amount if someone wants to say

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something on that but we are not going to go off down that rabbit hole in this meeting. Because it is not what we are here to discuss tonight. That said, have you signed in?

Patton: I have.

Kaczmarczyk: Please raise your right hand and state your name.

Patton: Linda Patton.

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

Patton: I do.

Kaczmarczyk: Thank you. Please go ahead.

Patton: Well, I am mostly a life resident of Monroe County. I live in a home on Fairfax that was my aunt and uncles, so I have gone down that road my whole life, basically. I have seen it in disrepair, the church in disrepair. My son is a videographer and he did a video in there when the other people owned it and it was really kind of sad to see the inside of it, how it looked. I have also seen what Brook and Cory have done to it. They volunteer for an agency I work for and we have had a long time ago when it was the studio events there and it's beautiful and it is beautiful as an Airbnb. I appreciate having somewhere when people are going to visit Lake Monroe that is close to the lake and close to me. It is available for people to stay in at a reasonable amount of money. So, I appreciate what they have done to it and it looks good.

Kaczmarczyk: Thank you. Anyone have any questions? Ok, thank you very much.

Patton: That oak tree was like an acorn when I first started going there.

Kaczmarczyk: Well, it is a lot more than that now, that's for sure. Next person com on up and sign in. If you could both sign in if you both plan to speak. I will also remind people to that when you are speaking please try to stay near the microphones so we can pick up what you are saying for the minutes and people can hear you watching at home. If you could raise your right hand and state your names.

Bachant-Bell: Danielle Bachant-Bell.

Vanderstel: David G. Vanderstel.

Kaczmarczyk: Do you both swear or affirm to tell the truth, the whole truth and nothing but the truth?

Bachant-Bell: Yes.

Vanderstel: Yes.

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Kaczmarczyk: Thank you. Please go right ahead.

Bachant-Bell: David and I are both representing the Monroe County Historic Preservation Board of Review. I am Vice Chair. David is Chair. We want to, I am going to let David say what he wants to say but I would like to just say that our Board was completely in favor of this reuse. You do have to reuse the historic building for it to stay viable and I will also add that the interiors are not covered by historic designation or Bloomington Restorations covenants, so the fact that Brook and Cory have taken care of not just the exterior but the interior speaks a lot for taking care of these historic properties. But this is a good use for this property. We are very much in favor of it. They have been excellent stewards of this property and we would just like to see this approved for them and for Monroe County as well.

Kaczmarczyk: Thank you.

Vanderstel: As Chair of the Board I reiterate in support. The Board voted recently that we support the Adaptive Reuse of the property and as individuals who are committed to historic preservation we are pleased to see the preservation of the structure. As Danielle said, it is not about the interior but it's about the historical structure and the particular landscape. For years I have been on, well for 16 years I have been on the Meridian Street Preservation Commission up in Indianapolis. I am governor appointed of that and so I have dealt with issues of historic preservation and preservation of historic structures and we were really pleased to see the Riemans of this acquisition s property and their proposal to save it rather than allow it to remain unoccupied. So we support the proposal.

Thank you. Any questions? Alright, thank you very much sir.

FURTHER SUPPORTERS –1809-CDU-08 – Mt. Ebal Church

Kaczmarczyk: Anyone else who wishes to speak in favor of the petition? Come on up and please sign in. If you could raise your right hand and state your name.

Arferd: Ryan Arferd.

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

Arferd: I do.

Kaczmarczyk: Thank you. Please proceed.

Arferd: I just wanted to kind of echo the same sentiment that everybody had. I have been friends with Brook and Cory for a long time. I was friends with them when they bought the property throughout their first renovation and then also throughout their second. They have done a great job with it. I am also a photographer. I rented it from Brook to take pictures in. I would love to rent it to stay in there as well as an Airbnb and I kind of you guys said I don't k now what other use an old church really would have in that area. I think an Airbnb rental like Brook and Cory said is superior to a long-term rental, where they can keep an eye on it a little better. That is really about all that I wanted to add.

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Kaczmarczyk: Thank you. Any questions? Thank you very much sir. Anyone else who wishes to speak in favor of this petition? Seeing none. Is there anyone here tonight that would like to speak in opposition to this petition? Come on up.

REMONSTRATORS –1809-CDU-08 – Mt. Ebal Church

Kaczmarczyk: If you could sign in please. Can you state your name please?

Bolin: My name is Beverly Bolin.

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

Bolin: Yes.

Kaczmarczyk: Thank you. Please proceed.

Bolin: And may I please read my comments?

Kaczmarczyk: Certainly.

Bolin: Ok. The United Methodist South Indiana Conference did a quit claim deed to Bloomington Restorations in 1978. The deed stipulates to use said real estate for historical purposes. Bloomington Restorations restored the building. The deed also said if the property is not used for historic purposes it can revert back to the Methodist Conference. In 1981 the Monroe County Commissioners changed the zoning from Residential to Special Historic. Bloomington Restorations sold to Jay and Judith Ellis in 1995, same deed stipulations. Mr. Ellis updated the outhouse to a modern restroom, added heating and air conditioning to the outside restrooms. He added heating and air condition to the building and also did other remodeling which took the building, it made the building back like the original Mt. Ebal Church. He rented the building for weddings, receptions, family reunions and funerals. His funeral was also held here. There was a sign in front of the building and the sign read Historic Mt. Ebal Church. Jay and Judith Ellis Revocable Trust sold to Gerald Pagac who quick claimed to Brook and Cory Rieman with the same deed stipulations. In 2012 Brook and Cory Rieman came to the Board of Zoning Appeals and asked for a Use Variance to operate a photography studio in the building. Their letter said and I would like to quote from that letter, “We feel this is an appropriate Adaptive Reuse of a historic structure. Using the building as a photography studio would allow it to remain just as it is with only minor interior changes. Additionally, the permanently recorded deed restrictions previously mentioned by BRI to prevent the historic architectural context of the building from being compromised, require their approval of any alterations. These restrictions would likely limit the ability of an owner to convert the building into a residence but would not present a problem for our intended use.” So the Historic Mt. Ebal Church sign, then read Brook Rieman Photography. To be granted a Use Variance for the photography studio, one stipulation was and I quote again, “the approval will not be injurious to the public health, safety, morals, and general welfare of the community and the use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner.” Myself, as well as members of the community feel that we have been injured in a substantially adverse manner. The public was also upset when

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the Historic Mt. Ebal sign was painted over and it said Brook Rieman Photography. In 2016 the Riemans had to sign a written commitments letter promising to abide by the deed restrictions and to protect the historic structure. At some point the Brook Rieman Photography sign was taken down. The Historic Mt. Ebal Church has now been altered to an Airbnb with a kitchen, a tile bathroom, a washer and dryer and a satellite dish on the roof without obtaining the necessary permits and variances from the county. They had an ad and their ad stated and I quote, "Large, circular driveway provides pull-through parking for any size boat and the spacious backyard includes a stone patio fire pit." The deeds stipulate that the property is to be used for historical purposes, so I don't understand how this could be a historic purpose. The building looks nice but the Riemans are here tonight because they violated their Use Variance and their business is now shut down. I don't know if Bloomington Restorations approved the alterations. The Riemans are asking permission to operate their business as a tourist home or cabin, I believe it is basically the same as an Airbnb. The public opposes the variance allowing the Riemans to operate this business. They did not keep their commitments for a photography studio. But they instead changed the interior and character of the building from a historic church to an Airbnb without permission. The property was to be used for historical purposes according to deed stipulations and not for any type of residential use. The relatives of the man how built the church as well as the remaining church members did not want the building sold or used as a residence and now if the variance is granted tonight, it will stand in opposition of the wishes of the members of the church.

Kaczmarczyk: Thank you very much. You might stay there if anyone has any questions. Alright, no questions. I will have some questions for staff when we are all done here. Is there anyone else in the public who would like to speak in opposition to this petition? Ok, seeing none.

ADDITIONAL QUESTIONS FOR STAFF –1809-CDU-08 – Mt. Ebal Church

Kaczmarczyk: Ok. Staff, there was a lot packed into that last statement. My understanding the interior renovations there weren't permits needed for any of that. Was there?

Wilson: There might have been Building Department Permit requirements depending on what was done. However we do not typically issue a permit, we sometimes issue an Improvement Location Waiver when interior renovations are done. I believe there was a waiver on this property.

Yanke: Yes and the other thing is some of the exterior alterations that were mentioned I can't speak for BRI on those, I don't know if there is a representative here tonight, but as far as our ordinance goes, I guess I will wait a minute (bell rings). So, as far as the exterior alterations go, whenever a property has oversight from the Historic Preservation Board meaning that it is locally designated, there should be Certificate of Appropriateness issued for those exterior alterations. Now, there was some confusion on this property I will say from an administrative standpoint we did not have the zoning map correct in terms of it being designated. With all of this discussion the last few months we actually have corrected our zoning maps and found the original ordinance designated Historic and made the correct changes. I know there weren't Certificates of Appropriateness issued in the past for this property but maybe there should have been. But I know that now we have made the correction, so we will have to issue the correct certificates for any exterior alternations done moving forward.

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Kaczmarczyk: Ok, now what, it was said that there were agreements and I have been trying to remember the meeting from 2012 and I remember discussing traffic, I remember discussing outside things. Is there a document or rule or covenant of some kind that says this has to be used for only historical use and if it exists does it have any bearing on us and how does it define historical use?

Yanke: I brought a deed here that was referencing 1978 so it has a few sentences so I can pass that out. But as far as administering that I will ask Larry to answer that.

Kaczmarczyk: I just know that there are certain things like neighborhood covenants that have no authority over us so I was curious if something like this in what manner it applied to us and again how it defines historic.

Wilson: The question of what is meant by historic purposes under this deed is again a private matter between all the different parties and their successors. We don't adjudicate those issues and I don't know whether or not the uses they are putting the property through now are consistent with the intent of the deed or not. Again, that is a private matter and clearly if they are not then Bloomington Restoration could enforce the covenants against them. What we look at primary in our Historic Preservation ordinance is the exterior of the building. For example, the satellite dish would have to get the approval of our Historic Preservation Board to remain on the church.

Yanke: I don't think they can hear you Larry.

Wilson: Can you hear me now? Ok. The satellite dish would need and any other renovation to the outside of the building as Jordan said requires a Certificate of Appropriateness which means it goes to our Historic Preservation Board. They look at the plans. They look at the renderings and say yes this is consistent with what would be historic for this type of building or it is not. Typically our members of our board are either professionals in historic preservation or private citizens that have a great deal of experience in that area. They basically make a decision and issue what is called a Certificate of Appropriateness prior to any renovations to the exterior of the building and I don't know that that was followed initially on this building. Because as Jordan says there was confusion as to whether or not it was actually designated under our zoning ordinance due to the time period when it was designated and changes to the zoning map that did not pick that up.

Kaczmarczyk: Ok. Any questions, go right ahead?

McNeil: I have got a question for the property owners.

Kaczmarczyk: Yeah, if you could step back up here and I will remind you, you are still under oath.

McNeil: Do you have any objection or do you have any plans to maintain the sign that says Historic Mt. Ebal Church there?

C. Rieman: We removed that sign. Because of the issue that we aren't addressing the parking. Because it led people to believe that this was a public place or a church that they could come and park at and part of our efforts to eliminate this issue we removed that sign. Also, we don't have,

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when we remove it, it is in the right-of-way. It is a pre-existing conforming structure that if it was permitted I would have no opposition to reinstall that sign stating that it's...

B. Rieman: It just leads to confusion.

C. Rieman: It leads to confusion. Because when you see a church and generally speaking you don't have, I wouldn't have a problem pulling in if I wanted, to do whatever. It made it look like it was a public place and it is private property. Our liability insurance is a concern and there is a lot of concern we have with people parking there. But aside from that we are not addressing that. So, to answer your question, I wouldn't necessarily be 100 percent opposed to it. There are the issues that I just addressed that I do have a concern with is its inviting people there that we don't necessarily want to have there. But if that was required then I would do it.

McNeil: In my life experience most buildings or the like that are considered historical purposes they are historical purpose because they have some plaque or sign or something that says this is a historical place and to me that kind of needs to be there.

B. Rieman: That might be a question for the Historic Preservation Board.

C. Rieman: yeah, I am not sure. It was, we took it down before it had this overlay. I don't disagree with you and I wouldn't be opposed to, but it's not on the National Historic site registry or anything like that that you typically see those features.

B. Rieman: I think it would have to state that this is a private residence now. Because we do have that issue with people just walking up wanting to take pictures and stuff and they don't realize it's a residence they are peeking in the windows. We have had a lot of trash.

C. Rieman: We have had people just open the door, when it was a photography studio, they would just walk right in and you know we just polite educated them and said this is private. Our photography business was by appointment. We didn't just have open door office hours or anything like that.

McNeil: Thank you.

Kaczmarczyk: Any other questions while we have them here? Alright.

C. Rieman: May I address a couple of things that were mentioned?

Kaczmarczyk: Yeah.

C. Rieman: If we are behind just say that's enough. As far as the satellite dish, at the time that we installed that there was no historic, obviously in 1981 it was deemed historic but there was no overlay. We didn't know that we couldn't do that with, we didn't know there was restrictions with that and according to BRI who holds the original covenants they say that is a temporary fixture, it can be removed at any time, so he was ok with it. We did get a Building Permit when we did the interior remodel. We went through the process, we got a Building Permit. We did everything the

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way we were supposed to. There was a lot of things that were added to the place before we purchased it. The exterior restroom that he improved, he did not have a permit to improve. It actually was against, he put up a fence to hide what he was doing. He constructed the restroom and then he poured a patio like a concrete patio, it was pavers but it had like a flow-able fill underneath it, against the building. When we bought it we removed all of that and brought back to life the limestone slabs that were there originally and when we did that we had to remove the bottom boards on the siding and replace the sulfate because they had rotted.

B: Rieman: And that was at the direction of Bloomington Restorations. They asked us to remove all of those things to fit, we are held like you talked about the covenants on the property to make the, the way that Bloomington Restorations covenant works, Historic Use is the outside condition of the building being in historic.....

C. Rieman: We have to maintain the façade of the church and the grounds and the exterior part of the building. The county board meeting when we went to it in September explaining what we were doing and seeking their approval, Steve was there, the Director of BRI and I asked him, I said, well, what is Historical Use? He said it is whatever we say you need to do to the property and he is saying

B. Rieman: BRI.

C. Rieman: BRI is saying whatever the covenants say and Ms. Bolin said that the church, the Methodist never wanted this to be a residence. In one of the newspaper clippings, in fact there was a meeting, a public meeting held not too long ago about this and they had this flyer sitting on the thing that said, the sentence right after what she underlined that she wanted to address said the Methodist Conference wanted to sell this property as a residence. Then BRI bought it to restore it. So their goal was to sell it as a residence. They wanted it to be used in that capacity. In our letter at the time that she put a quote in there that said this is what we are committed to do, things change in life, uses change, you know, it had to be used. Like we explained the photography business was no longer. We had to make use of the property and maintain it. Because if I can't maintain it, if I am not going to generate any income off of it, I can't maintain it. If I can't maintain it, it is going into disarray. She mentioned that the neighbors and the public were opposed to this, if I am not mistaken I don't believe Ms. Bolin even lives in this county and the neighbors that we spoke to all of them were very much in favor of us doing this. They said we are glad to see the work that you are doing. It is required that we send letters to all the neighbors 2 properties deep. We went and spoke to them and said, hey, you are going to get a letter from us here is what it is about and they are extremely happy. They have been happy from what we done from the beginning. I think that is pretty much all that I have at this time. Do you guys have any more questions?

Kaczmarczyk: Not I and I think you answered some of my questions that were raised by the previous person.

C. Rieman: I think in your packet you should have a letter from Bloomington Restorations too that kind of talks to the covenants issue, if you haven't read that.

Kaczmarczyk: Ok, thank you. Any other questions? No. Ok.

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Clements: I just have one comment. Because of the historical marker issue I know that there's an application process to the state that I think just recently the deadline was passed, you can apply for a state wide historical marker and it clearly states that it's a historical marker, so that it clears up the misconception that it's a functioning church. I just wanted to state that.

Kaczmarczyk: Thank you much. Any more discussion from amongst the Board? If not, I will entertain a motion.

FURTHER QUESTIONS FOR STAFF – 1809-CDU-08 – Mt. Ebal Church

McNeil: On case 1809-CDU-08, Conditional Use Historic Adaptive Reuse as a Tourist Home for the Historic Mt. Ebal Church, I would move that we approve the Conditional Use based upon the findings of fact and subject to an additional condition that the land owners apply for a Historical Marker for the property as a condition of approval.

Kaczmarczyk: I will **second**. We have a motion with a condition. Larry, can you call the roll, please?

Wilson: Sure will. The vote is on petition 1809-CDU-08, Mt. Ebal Church Historic Adaptive Reuse Conditional Use. A vote in favor is a vote to grant the Conditional Use of the Mt. Ebal as a Tourist Home under the Adaptive Use Chapter. Approved based upon the findings with the development review conditions in the staff report. Margaret Clements?

Clements: Yes.

Wilson: Peter Kaczmarczyk?

Kaczmarczyk: Yes.

Wilson: Michael McNeil?

McNeil: Yes.

Wilson: Mark Kruzan?

Kruzan: Yes.

Wilson: The motion carries 4 to 0.

The motion in case 1809-CDU-08, Mt. Ebal Church Historic Adaptive Reuse Conditional Use, Chapter 813, in favor of approving the variance with the conditions and commitment attached to the motion, as well as the addition condition applied during the meeting, carried unanimously (4-0)

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NEW BUSINESS

6. 1809-VAR-31 Dickerson / Kelley Minimum Lot Size Variance to Chapter 804

7. 1809-VAR-32 Dickerson / Kelley Lake Setback Variance to Chapter 825

One (1) 1.38 +/- acre parcel in Clear Creek Township, Section 24 at 8041 E Hardin Ridge Rd. **Zoned FR/ECO1.**

BOARD ACTION: Kaczmarczyk introduced the petition.

STAFF ACTION:

Wilson: Again, this is the Dickerson/Kelley Minimum Lot Size Variance and Lake Setback Variance. Again, I am doing this for Tammy. This is a 1.38 acre site on Lake Monroe. The address is 8041 East Hardin Ridge Road. The zoning is Forest Reserve. It is in the ECO Area, Environmental Constraints Overlay zone Area 1, which means that construction is limited to areas less than 12 percent slope. There is the location in that little red dot. Again, the current zoning map shows this at Forest Reserve. The Comprehensive Plan shows this as Rural Conservation. As you can see, there is an area of level at the top of this ridge where the current house is and current outbuildings are. But further dramatically slopes down to the lake. There is the slope map and everything in blue is ok. There is another aerial view of the site. The lot size does not meet the requirements for Forest Reserve which is 5 acres and this lot size is 1.38 acres. I will say that this is on a packing plant, which under IDEM's control it does not require a septic tank. It is basically on a maintained sewer system there as opposed to utilizing a septic tank. The small lot size is somewhat less important as it typically would be. In addition to setbacks from roads, streets and side yards we also have a setback from Lake Monroe which is 125 feet from the normal pool elevation and the green line really shows that setback. As you can see the existing house is somewhat encroaching on that setback. The petitioners desire to add onto the house. They are seeking to buy the house and then do a renovation to add onto it. The addition would go somewhat to the front and to the left of that house. It would not significantly encroach into the steep slope areas but would encroach over the 125 foot setback from the lake. Here are some pictures as you can see it gently slopes towards the street. But as you can see from the upper left hand it is a fairly level site. Then there is a picture of the rear yard. One of the conditions Tammy placed on the site would be to add 5 trees to the area and also when the site plan comes in there will be some effort to control erosion on the site. Again, the petitioners are not the current owners and apparently there was some storm damage on this site which caused some of the trees to be salvaged and removed. There is a good aerial view of the site. The letter requesting the variance is in the packet and we had not comments other than to provide a plan to stabilize erosion on the site when they come in to get a Building Permit or a Grading Permit. Our recommended motion is to approve the Minimum Lot Size Variance and approve the Setback Standards Variance with the conditions that they apply for a Grading Permit to deal with the erosion and plant 5 trees as well as consult with the County Drainage Engineer to get approval for the proposed additional drainage, which ultimately will prevent erosion on that lot. Again, our recommendation was to grant the variance subject to those conditions.

RECOMMENDED MOTION:

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

Approve the Lake Setback Design Standards Variance to the Lake Setback in Chapter 825 of the Monroe County Zoning Ordinance based on the findings of fact with the following conditions:

1. Apply for a grading permit with the Planning Department showing the upgrade to the erosion area of concern and the location and vegetation of at least five (5) trees to replace the trees that have been felled over time on the property within the steep slopes.
2. Consult the County Drainage Engineer to get an approved plan for proposed addition drainage.

FINDINGS OF FACT: Minimum Lot Area Standard

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

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

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

Findings:

- Approval of the variance would allow the petitioner to further develop a 1.38 +/- acre parcel;
- The parcel has an existing home with attached garage and accessory structure;
- Proposed development is required to meet all setback standards with exception of the lake setback;
- The lake setback is 125' from the normal pool elevation of 538';
- The petition site is zoned Forest Reserve (FR) with ECO Area 1;
- The minimum lot area in Forest Reserve (FR) is 5.0 acres;
- The parcel is not platted;
- It was determined by staff that the proposed building site is not located on slopes greater than 12 percent;
- There is no known karst on the property;
- The lot is bordered by the Army Corps of Engineers property that encompasses Lake Monroe;
- The 16 lot housing community is within federally managed Hardin Ridge, a 1,200-acre recreational complex located on the shores of Monroe Reservoir in Hooiser National Forest;
- There are other undersized lots in the immediate area (see Exhibit 3);
- Conclusion: It would not impair the stability of a natural or scenic area.

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

Findings:

- See findings under A (1);
- Approval of the variance allows an expansion to the existing home;
- The petition property is served by a private, gated drive and is addressed off of E Hardin Ridge Road;
- E Hardin Ridge Road is classified as a local road;
- The site utilizes a packaging plant service for the sewage disposal system that is monitored by IDEM;
- Electric and other utilities are underground;
- Conclusion: It would not interfere with or make more dangerous, difficult, or costly, the use, installation, or maintenance of existing or planned transportation and utility facilities.

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

Findings:

- See findings under A(1) and A(2);
- The proposed addition is approximately 1100 square feet residential addition and a 495 square foot porch to an existing 2,762 square foot structure;
- Conclusion: The character of the property included in the variance would not be altered in a manner that substantially departs from the characteristics sought to be achieved and maintained within the relevant zoning district.

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

Findings:

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

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

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

Findings:

- See findings under A (1);
- Adjoining uses are residential in nature;
- Surrounding uses are public/recreational;
- All of the surrounding residential properties do not meet the 5.0 acre lot size standard for FR (see Exhibit 3);
- Conclusion: The specific purposes of the design standard sought to be varied would be satisfied.

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

Findings:

- See findings under A (1);
- There is FEMA floodplain mapped on site but does not impact the existing or proposed structures;
- The gutters from the existing home drain under the yard toward the lake into the steep sloped areas;
- One gutter outlet needs additional stabilization to prevent further erosion into Lake Monroe;
- Staff is recommending approval under the condition that drainage plan be reviewed the County Drainage engineer;
- The site utilizes a packaging plant service for the sewage disposal system that is monitored by IDEM;
- Conclusion: It would not promote conditions (on-site or off-site) detrimental to the use and enjoyment of other properties in the area.

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

Findings:

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

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

Findings:

- See findings under (A)(1);
- The property currently has an existing residence built 1994 with attached garage and an accessory structure;
- If the variance is not granted, the proposed addition cannot be built;
- The strict application of the ordinance would not allow any further development on the parcel without a minimum lot area variance;
- All seventeen lots in immediate vicinity are also under the 5.0 acre minimum lot area requirement;
- Two variances are needed to approve the proposed addition.

FINDINGS OF FACT: 125' Lake Setback

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

Findings:

- Approval of the variance would allow the petitioner to further develop a pre-existing nonconforming structure that is within the 125' lake setback;
- The parcel has an existing home with attached garage and accessory structure;
- Proposed development is required to meet all other design standards other than the minimum lot size;
- The lake setback is 125' from the normal pool elevation of 538';
- The proposed addition will not be within the 125' lake setback;
- The petition site is zoned Forest Reserve (FR) with ECO Area 1;
- A design standards variance is being requested for minimum lot size as a part of this petition;
- The parcel is not platted;
- It was determined by staff that the proposed building site is not located on slopes greater than 12 percent;
- There is no known karst on the property;
- The lot is bordered by the Army Corps of Engineers property that encompasses Lake Monroe;
- 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;

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Findings:

- See findings under A (1);
- Approval of the variance allows an expansion to the existing home;
- The petition property is served by a private, gated drive and is addressed off of E Hardin Ridge Road;
- E Hardin Ridge Road is classified as a local road;
- The site utilizes a packaging plant service for the sewage disposal system that is monitored by IDEM;
- Electric and other utilities are underground;
- Conclusion: It would not interfere with or make more dangerous, difficult, or costly, the use, installation, or maintenance of existing or planned transportation and utility facilities.

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

Findings:

- See findings under A(1) and A(2);
- The proposed addition is approximately 1100 square feet residential addition and a 495 square foot porch to an existing 2,762 square foot structure;
- Conclusion: The character of the property included in the variance would not be altered in a manner that substantially departs from the characteristics sought to be achieved and maintained within the relevant zoning district.

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

Findings:

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

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

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

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Findings:

- See findings under A (1);
- Adjoining uses are residential in nature;
- Surrounding uses are public/recreational;
- Conclusion: The specific purposes of the design standard sought to be varied would be satisfied.

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

Findings:

- See findings under A (1);
- There is FEMA floodplain mapped on site but does not impact the existing or proposed structures;
- The gutters from the existing home drain under the yard toward the lake into the steep sloped areas;
- One gutter outlet needs additional stabilization to prevent further erosion into Lake Monroe;
- Staff is recommending approval under the condition that drainage plan be reviewed the County Drainage engineer;
- The site utilizes a packaging plant service for the sewage disposal system that is monitored by IDEM;
- Conclusion: It would not promote conditions (on-site or off-site) detrimental to the use and enjoyment of other properties in the area.

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

Findings:

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

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

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Findings:

- See findings under (A)(1);
- The property currently has an existing residence built 1994 with attached garage and an accessory structure that is within the 125' lake setback;
- If the variance is not granted, the proposed addition to the non-conforming home cannot be built;
- Two variances are needed to approve the proposed addition.

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

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

QUESTIONS FOR STAFF – 1809-VAR-31 & 1809-VAR-32 – Dickerson/Kelley

Kaczmarczyk: Thank you Larry. Any questions for Larry or for staff? Alright, in that case would the petitioner or the petitioner's representative like to address the Board this evening? Ok, not at this time. That is fine. Is there anyone in the public who would like to speak in favor of this petition? Seeing none. Is there anyone who would like to speak in opposition to this petition? Seeing a whole lot of none. Discussion? Questions? Motion?

**PETITIONER/PETITIONER'S REPRESENTATIVE –
1809-VAR-31 & 1809-VAR-32 – Dickerson/Kelley: None**

SUPPORTERS –1809-VAR-31 & 1809-VAR-32 – Dickerson/Kelley: None

FURTHER SUPPORTERS –1809-VAR-31 & 1809-VAR-32 – Dickerson/Kelley: None

REMONSTRATORS –1809-VAR-31 & 1809-VAR-32 – Dickerson/Kelley: None

**ADDITIONAL QUESTIONS FOR STAFF –
1809-VAR-31 & 1809-VAR-32 – Dickerson/Kelley: None**

FURTHER QUESTIONS FOR STAFF – 1809-VAR-31 & 1809-VAR-32 – Dickerson/Kelley

McNeil: I have a motion.

Kaczmarczyk: Oh, really, lets here it.

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McNeil: On case numbers 1809-VAR-31 and 1809-VAR-32, for Minimum Lot Size Variance and Lake Setback Variance respectively, I move that we approve both variances and with the second approval being subject to the 2 conditions noted in the document.

Kruzan: **Second.**

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

Wilson: Sure will. The vote is on petitions 1809-VAR-31, Minimum Lot Size Variance and 1809-VAR-32, Setback from Lake Monroe Variance. A vote in favor is a vote to approve both petitions based on the findings and with development review conditions set forth on Variance 1890-VAR-32. Peter Kaczmarczyk?

Kaczmarczyk: Yes.

Wilson: Michael McNeil?

McNeil: Yes.

Wilson: Mark Kruzan?

Kruzan: Yes.

Wilson: Margaret Clements?

Clements: Yes.

Wilson: Both variances are approved 4 to 0.

The motion in cases 1809-VAR-31, Dickerson / Kelley Minimum Lot Size Variance to Chapter 804, and 1809-VAR-32, Dickerson / Kelley Lake Setback Variance to Chapter, in favor of approving both of the variances with the conditions and commitment attached to the motion carried, unanimously (4-0)

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NEW BUSINESS

8. 1809-VAR-33

Deckard / Mann Buildable Area Variance to Chapter 804

One (1) 8.01 +/- acre parcel in Polk Township, Section 27 at 9450 S Dutch Ridge Rd (Parcel No. 53-12-27-300-019.000-010). **Zoned FR.**

BOARD ACTION: Kaczmarczyk introduced the petition.

STAFF ACTION:

Wilson: This is a case I am taking for Tammy. This is a Buildable Area Variance to Chapter 804. This is an 8.01 acre parcel in Polk Township on 9450 S. Dutch Ridge Road. The zoning again is Forest Reserve in that area. There is the general location and there is the current zoning map is Forest Reserve. The Comprehensive Plan has it as Conservation. Here are the site conditions and again the purpose of this variance is Mr. Deckard desires to purchase the property and to build a home on it at some point. Not necessarily within the 2 year period for a Building Permit. Prior to purchasing the property he would like the assurance that it would be possible to build a house on the lot that he is purchasing. As you can see there the buildable areas are in blue. The non-buildable areas are in red and there is the site plan showing the possible locations. In the upper left hand corner is the location of the house and septic tank proposed. As you can see there is minimal encroachment into the steep slope area. He is basically seeking advanced approval so that his project would be vested to build prior purchasing it and prior to subdividing the property. Typically in this area if you have a pre-existing legal lot of record you are entitled to encroach into slope restricted areas in the extent necessary to build a house. That was something that was placed in the ordinance when we established the Environmental Constraints Overlay to basically avoid any possible issue of takings. That we have these pre-existing lots some of which have no buildable area that is less than the requirement for the Environmental Constraints Overlay. In this case because this property is going to be subdivided it would no longer be a pre-existing lot and would lose that qualification. So the variance runs with the land and basically would allow that to continue even if there is a subdivision subsequent to this decision. That is the purpose of the variance. Again, these are pictures of the site. As you can see, our slope maps are somewhat deceptive and that is why we always try to show you pictures to kind of see what the lot is like. Because the way slope is calculated there is kind of a 50 foot buffer that maybe built into the calculation depending on the nature of the slopes. Because it is an average. We had no comments from Stormwater and our recommendation is to approve the Design Standards Variance for Buildable Area, 15 percent Slope Requirement, based on the findings of fact.

RECOMMENDED MOTIONS:

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

FINDINGS OF FACT: Buildable Area

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 develop a ~3600 sf home site including an attached garage in which a portion would encroach into non-buildable area, in an area with slope 15% or greater (as defined in Chapter 825 Area 2 Regulations);
- The size of the buildable area is 0.74 acres;
- The site is adjacent to single family residential uses or vacant, wooded lots;
- The site would gain access from INDOT regulated S State Road 446;
- The site is currently vacant and wooded with one cleared pasture area of approximately 0.65 acres;
- The site has no FEMA floodplain on the lot;
- The lot is adjacent to Hoosier National Forest land;
- Conclusion: It would not impair the stability of a natural or scenic area;

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

Findings:

- See Findings under Section A(1);
- The site gains access via S State Road 446, a major collector;
- The estimated right of way varies but one measurement estimated by staff was 140' wide;
- The property report card states that water and electric are available for the site;
- There is a septic permit (# 21755) on file with the Health Department that allows a 3 bedroom residence to be located along the northern lot line;
- Conclusion: It would not interfere with or make more dangerous, difficult, or costly, the use, installation, or maintenance of existing or planned transportation and utility facilities;

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

Findings:

- See Findings under Section A(1);
- The site is zoned Forest Reserve (FR);
- Surrounding properties are zoned Forest Reserve (FR);
- The proposed location for the residential accessory structures meet all other Buildable Area requirements from Chapter 804-4(E), excluding the 15% slope requirement;
- The future Type E Subdivision will not result in less buildable area on the petition lot;
- Conclusion: The character of the property included in the variance would not be altered in a manner that substantially departs from the characteristics sought to be achieved and maintained within the relevant zoning district;

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

Findings:

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

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

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

Findings:

- See Findings under Section A(1);
- The proposed site plan will require a driveway permit prior to building permits being issued;
- The home site will be located over 350' from S State Road 446;
- The current lot size is 8.01 acres and the proposed lot size for the Type E will reduce it 0.53 acres allowing the lot to still meet the density requirement for the FR zone;
- Conclusion: The specific purposes of the design standard sought to be varied would be satisfied;

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

Findings:

- See Findings under Section A(1&2) and B(1);
- Water drains to the east and south;
- Conclusion: It would not promote conditions detrimental to the use and enjoyment of other properties in the area

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

Findings:

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

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

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Findings:

- Practical difficulties exist in that once the proposed Type E subdivision is completed the lot's status of 'pre-existing nonconforming' will be lost and will be ineligible for an Administrative Waiver despite the fact that the amount of buildable area on the lot will not change during the lot re-description process;

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 – 1809-VAR-33 – Deckard/Mann

Kaczmarczyk: Thank you Larry. Any questions?

Clements: Could you go back to the grading map and also describe in more detail the Environmental Constraints with regard to this property and this region?

Wilson: When we say slope restraints basically we have 2 different standards. We have the Buildable Area requirement throughout the county that to have Buildable Area it has to 15 percent or less.

Clements: I mean for this property it looks as though there is only one possible place to build the home and it looks like, you know, not a good place for a subdivision, so to speak.

Wilson: When I say subdivision, basically we are talking about taking this large lot and splitting it in two. Basically splitting off the existing house to the south that is shown on the site plan map so there will be no new subdivision other than you would have 2 lots rather than 1 lot on this location.

Kaczmarczyk: The big triangle is the lot in question and the line down the middle is the proposed subdivision that he wants to do.

Wilson: Yes.

Kaczmarczyk: Ok.

Wilson: So there will be basically 2 large lots.

Kaczmarczyk: Ok. Any other questions for Larry or for staff? Alright, would the petitioner or the petitioner's representative like to address the Board this evening? Alright, come on up and sign in.

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PETITIONER/PETITIONER'S REPRESENTATIVE – 1809-VAR-33 – Deckard/Mann

Deckard: Good afternoon.

Kaczmarczyk: Good evening to you. Please raise your right hand and state your name.

Deckard: Eric Deckard.

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

Deckard: I do.

Kaczmarczyk: Thank you. Please proceed.

Deckard: I am here representing the petitioner tonight and also I am an adjacent land owner to this piece of property in which I wish to purchase and to build our future home on. Currently there is already 3 lots here. What I am proposing is to adjust the lot lines between these parcels and not subdivide. If we could kind of zoom out just a little bit, Jordan, on this picture. I am going to step away from the mic, so if I am not speaking loud enough I will step back. Currently my existing home is right here on Tract 3 and Mr. Mann's property is located on Tract 2, which is the blue area that is highlighted here. Tract 1 is the area in which I would like to purchase which is an existing 8 acre lot. What I am proposing with the Type "E" Administrative Subdivision is purchasing this small triangular shaped area to make my existing lot a tad bit larger, not changing any buildable area on any of these lots. In order to do so since Mr. Mann only owns 5 acres on Tract 2, I am going to take a little from Tract 1, which exceeds 5 acres and place back with Tract 2 so that these stay with the current zoning configuration of 5 acres. So I am not creating any new lots here. I am just wanting to be able to place a home on this northern portion and the reason, I am going to walk you through the thought process and how I came up with this concept was that the lower area in the middle of Tract 1 you can see has some buildable area. When you take the front yard setbacks for the highway it is going to eat up a large portion of it because a majority of it is road frontage. With the northern portion you can see it has a much smaller road frontage area, which means when we allow for the setbacks there it eats into the buildable area a lot less. The placement of septic site has been the driving force here in this case. When we searched the area which would be further east of the home we found that there was rock near the surface which was not adequate for a septic field. So we had an are tested along the northern line which come back as a good spot for a septic field so we have decided to place the home where we would initial thought would be a good place for the septic. Because we really wanted gravity flow going flow going from the home to the septic. But in this case I am going to have to have a pump engineered to go to the septic field.

Kaczmarczyk: Alright.

Deckard: The other part of the concept was we wanted to maintain pretty similar in footprint as what we now possess and in order to do so we decided to place a garage attached to the home instead of having a detached garage like we do at our existing home site, so that we could create a smaller footprint and the same way with the septic field. We are choosing to go with a Presby

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system, which would have a smaller footprint than having a conventional system. If you have any questions I would be glad to try to answer any questions that you may have.

Kaczmarczyk: Thank you. Anyone have any questions for Mr. Deckard? Alright, looks like you are free. Thank you very much.

Deckard: Thank you.

Kaczmarczyk: Is there anyone here today who would like to speak in favor of this petition? Seeing none. Is there anyone here today who would like to speak in opposition to this petition? Again, seeing none. Further discussion or I will entertain a motion.

SUPPORTERS –1809-VAR-33 – Deckard/Mann: None

FURTHER SUPPORTERS –1809-VAR-33 – Deckard/Mann: None

REMONSTRATORS –1809-VAR-33 – Deckard/Mann: None

ADDITIONAL QUESTIONS FOR STAFF –1809-VAR-33 – Deckard/Mann: None

FURTHER QUESTIONS FOR STAFF – 1809-VAR-33 – Deckard/Mann:

McNeil: I have a motion. **In case 1809-VAR-33, Buildable Area Variance, I move to approve the variance subject to the findings of fact, based upon the findings of fact.**

Kaczmarczyk: I will **second**. Call the roll please Larry.

Wilson: The vote is on petition 1809-VAR-33, Deckard/Mann Buildable Area Variance. A vote in favor is a vote to approve the variance based upon the findings with any conditions set in the staff report. Michael McNeil?

McNeil: Yes.

Wilson: Mark Kruzan?

Kruzan: Yes.

Wilson: Margaret Clements?

Clements: Yes.

Wilson: Peter Kaczmarczyk?

Kaczmarczyk: Yes.

Wilson: The variance is granted 4 to 0.

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The motion in case 1809-VAR-33, Deckard / Mann Buildable Area Variance to Chapter 804, in favor of approving the variance with the conditions and commitment attached to the motion, carried unanimously (4-0)

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NEW BUSINESS

9. 1810-VAR-34

Panozzo Minimum Lot Size Variance to Chapter 804

One (1) 0.93 +/- acre parcel in Salt Creek Township, Section 21 at E Pine Grove Rd (Parcel No. 53-07-21-400-019.000-014). **Zoned CR/ECO1.**

BOARD ACTION: Kaczmarczyk introduced the petition.

STAFF ACTION:

Yanke: Alright, thank you. As you mentioned this is a Lot Size Variance to Chapter 804. The zoning is Conservation Residential and it is located in the Environmental Constraints Overlay. The property is off of East Pine Grove Road. The size of the parcel is 0.93 acres. The minimum lot size is 2.5 in that zoning district. Here you have the location map with the red parcel there in the middle. The current zoning map as Conservation Residential as are some of the properties to the east, Forest Reserve to the west. Comprehensive Plan has it as Rural Residential. You can see the site conditions map. The parcel lines are GIS are a bit shifted to the right though, so if you can imagine them pushed a bit to the left. The professional survey that was submitted will depict the property correctly. Here you can see the slope map. Again, we are working in the ECO Area and Buildable Area, so you really have a 15 percent but then even more strict 12 percent slopes. So you see the swath of area and also show on the professional survey that was submitted, the area that is less than 12 percent. Pine Grove Road here on the top left and top right. There is an existing cut there that I spoke with the Public Works Department about and they said that they will grant them a driveway basically for construction of a single-family residence. Because that is what is permitted there and that is what is being proposed. You can see the car there, the view from Pine Grove Road as you would enter into the property and then the picture to the bottom right is essentially looking east if you can imagine and that structure if I am recalling correctly is on the parcel to the east of it. Again you see the aerial view here and also you see a little line there to the left of the pink line, the north and south line, just imagine the parcel I believe would be shifted 20 feet or so to the left on your screen. Here you have the professional site plan, a little hard to see on the left, so I zoomed in, with the surveyor showing the 12 percent line, the roughly 1,100 or 1,200 square foot structure and then with a small storage structure on the site. Then the driveway coming off the center of the property from the west. Public Works, the MS4 Coordinator, had not comments on this specific request. With that the recommended motion is to approve the Design Standard Variance based on the Lot Size in Chapter 804, based on the findings of fact. I do believe the petitioner is here to speak, or if he wants to speak. But I can take any questions.

RECOMMENDED MOTION:

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

FINDINGS OF FACT: Minimum Lot Size Standard

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

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

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

Findings:

- Approval of the variance would allow the petitioner to construct a single family dwelling (40' x 30' – 1,200 Square Feet) and storage structure (16' x 14' – 224 Square Feet);
- The parcel is currently vacant;
- The petition site is zoned Conservation Residential (CR) and located within the Environmental Constraints Overlay Area 1 (ECO1).
- The parcel is 0.93 +/- acres;
- The minimum lot size in Conservation Residential (CR) is 2.50 acres;
- There is no evidence that the building site is located on sensitive lands;
- There is no known karst on the property;
- There is no evidence that the building would obstruct a natural or scenic view;
- There are other parcels nearby that are under 2.50 acres in size;
- Conclusion: It would not impair the stability of a natural or scenic area;

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

Findings:

- See findings under A(1);
- The parcel is located off of E Pine Grove Road, a Local Road;
- Conclusion: It would not interfere with or make more dangerous, difficult, or costly, the use, installation, or maintenance of existing or planned transportation and utility facilities;

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

Findings:

- See findings under A(1) and A(2);
- The proposed structures would meet all design standards for the Conservation Residential (CR) Zoning District with exception to the minimum lot size standard;
- 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;

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

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

Findings:

- See findings under A(1), A(2), and A(3);
- Conclusion: The specific purposes of the design standard sought to be varied would be satisfied;

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

Findings:

- See findings under A(1);
- There is no floodplain on site;
- Conclusion: It would not promote conditions (on-site or off-site) detrimental to the use and enjoyment of other properties in the area;

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

Findings:

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

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

Findings:

- See findings under (A)(1);
- Conclusion: The approval, including any conditions or commitments deemed appropriate, is the minimum variance necessary to eliminate practical difficulties in the use of the property;

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.

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

QUESTIONS FOR STAFF – 1810-VAR-34 - Panozzo

Kaczmarczyk: Thank you, Jordan. Any questions? Quiet again. Would the petitioner or the petitioner's representative like to address the Board this evening? Alright, sounds good. Certainly if anyone does they will let me know. Is there anyone here who wishes to speak in favor of this petition? Is there anyone here who wishes to speak against this petition? Well, if you would like to come up we can swear you in and maybe we can answer your question, hope so.

Yanke: I will go back to the site plan.

PETITIONER/PETITIONER'S REPRESENTATIVE – 1810-VAR-34 – Panozzo: None

SUPPORTERS –1810-VAR-34 – Panozzo: None

FURTHER SUPPORTERS –1810-VAR-34 – Panozzo: None

REMONSTRATORS –1810-VAR-34 – Panozzo: None

ADDITIONAL QUESTIONS FOR STAFF –1810-VAR-34 – Panozzo

Kaczmarczyk: I suppose even for a question, I should swear you in. Please raise your right hand and state your name.

Mack: Jason Mack.

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

Mack: Yes.

Kaczmarczyk: Alright, thank you. What can we do for you?

Mack: Where exactly on that is the septic layout going to be?

Yanke: It is difficult to see but it is, let me see if I can pull out the...

Clements: There is a rectangular box almost parallel to the road. In the middle it says proposed septic.

Mack: So right here, the septic is to the left.

Yanke: Yes, that is correct. I have a better copy here. I can show you as well.

Mack: What about they are saying there is slope on that septic?

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Yanke: They are saying that all is under the 12 percent slope line according to the survey that was submitted. The development that I can see is under the 12 percent.

Mack: Is that proposed driveway where the driveway is sort of cut out now?

Yanke: I believe so but I would have to ask the petitioner to answer that.

Mack: It just doesn't seem like if you pull out of that proposed driveway right now that there is very much to the left of it (inaudible).

Yanke: Yeah.

Mack: If you look at the proposed, go back to that other aerial page, the proposed driveway being here, they are talking about the septic being right at that line right on the property line there at the slope.

Yanke: Yes, I mean the parcel lines are off.

Mack: But they are talking about putting the septic somewhere up in here.

Yanke: Somewhere essentially. Again, I just go by this licensed survey shows the exact area so I can pass it out or show you in particular. But basically it is within the

Mack: I pulled it up but I wasn't able to determine how they are going to squeeze in that heck of a slope to the left side of that driveway.

Yanke: Yeah, it looks like it I am just going by what was submitted though. But the petitioner can answer questions as well but according to the survey that was submitted it looks like everything is within that 12 percent slope line.

Mack: Ok.

Kaczmarczyk: I will say I just blew it up very large on my screen and I can see where the proposed septic is and I do see a space where it looks like theoretically there is room to run a driveway behind the septic. But again I had to enlarge it pretty big to see that.

Mack: Ok. It was tough to see when I got the information earlier in the week. Maybe the builder might have something else to say about it or where they are going to squeeze it in. But that is really, the septic was the only issue there.

Yanke: They are hard to see sometimes in the packet that we make.

Mack: I live down the road and they are very, very critical on my slope and I just didn't see that actually being in there. But they say it is so. That is just from my eyesight so I appreciate you listening to my concern.

DRAFT

Kaczmarczyk: Glad to try to make things clearer for you. Does anyone on the Board have any questions for anybody or any further discussion?

Clements: Because the septic issue was brought to the floor, I wonder if it's possible to approve this subject to a second septic plan inspection from another party and then subject to the review of the Plan Commission to see if it meets all of the requirements, just to have a second opinion on the septic issue.

Wilson: The septic permit is issued by the Health Department.

Clements: Yes.

Wilson: They go out and inspect the site and then inspect the installation at the time it goes in, so actually there is oversight.

Clements: There is oversight.

Yanke: There is. The one thing I thought of after, since most of the questions were about the slope, is that I do have a septic permit on file. The only thing is the septic permit that I have here just is saying it has issued a septic permit for this parcel. But based on the survey submitted that's where I am seeing they can locate it within that 12 percent slope threshold.

Clements: The thing that is confounding me is; number one the drawing and the rendering shows the property lines a little bit off and then secondly the fact that the lot size is under an acre and if there are problems with the septic there aren't that many options. So, before things go too far I wonder if it's possible to have an additional look at it, that's all.

Wilson: One of the reasons the county is basically in most cases only approving what are called Presby systems, which are anaerobic systems they are not basically air vetted, is that in the event of a failure with the Presby system, they actually can be reconstructed. If for some reason the sand gets clogged which happens sometimes, if its overloaded or there is an adverse drainage event, so it gets saturated, you actually can come in in one day and basically reinstall it, put in new sand and it functions again. That is one of the reasons the county has basically mandated Presby systems is because you don't necessarily have to have 2 separate septic fields. In the old days with the old anaerobic systems we used to require 2 sites on lots so that when the first septic failed, there would be a second site to build a new system. That is no longer necessary with the technology.

Clements: Ok.

Kaczmarczyk: Anyone else have any questions for anybody? Did you wish to address the Board?

Mann: I just, if you guys have any specific questions I would try to address then if you guys have any.

DRAFT

Clements: I think that my questions have been answered. Because of the concerns raised by the neighbor I thought that it would be my duty to investigate that a little bit further and my questions are answered. Thank you.

FURTHER QUESTIONS FOR STAFF – 1810-VAR-34 – Panozzo

Kaczmarczyk: Thank you for being willing. Alright, in that case unless there is yet more discussion, which is fine, I will entertain a motion.

McNeil: In case number 1810-VAR-34, Minimum Lot Size Variance, I move to approve the variance based upon the findings of fact.

Clements: I **second**.

Kaczmarczyk: A motion and a second. It's all yours Larry.

Wilson: The vote is on petition 1810-VAR-34, the Panozzo Minimum Lot size Variance. A vote in favor is a vote to grant the Minimum Lot Size Variance. Mark Kruzan?

Kruzan: Yes.

Wilson: Margaret Clements?

Clements: Yes.

Wilson: Peter Kaczmarczyk?

Kaczmarczyk: Yes.

Wilson: Michael McNeil?

McNeil: Yes.

Wilson: The variance is granted 4 to 0.

The motion in case 1810-VAR-34, Panozzo Minimum Lot Size Variance to Chapter 804, in favor of approving the variance with the conditions and commitment attached to the motion, carried unanimously (4-0)

DRAFT

REPORTS:

Planning/Wilson: I do have a question for the Board. The Plan Commission has decided to change the start time of their meetings to 5:30 rather than 6:00 o'clock. The feeling being that there is a lot of dead time for people from 5 to 6 where if its 5:30 we can get started a half hour earlier and I was going to ask whether that would be acceptable with the Board of Zoning Appeals. If anybody would have a difficulty with that we wouldn't necessarily have to do it but the idea would be to have it at 5:30 so people could maybe come from work rather than home and trying to hurry back.

Kaczmarczyk: It works for me.

Wilson: Ok, we will change the calendar to reflect the BZA n 2019 will start at 5:30 then. The other thing is that I would like to introduce our SPEA Fellow who has been quietly sitting here taking notes. Nic Wienard, she is a first year MPA student, coming to us from Washington, D.C. and a stint with the Peace Core in Africa. So she has a great deal of experience.

(Inaudible)

Wilson: The graphs.

Yanke: She helped uncover the issue we had with the one historic property that wasn't noted correctly on the map too, unfortunately, and we should say thank you for the Sheriff Deputy being here.

Kruzan: Thank you.

Kaczmarczyk: Yes, appreciate it and glad you had a quiet evening.

Wilson: We didn't know.

Kaczmarczyk: Good to be safe. Alright.

Wilson: That is all that I have.

Legal/Schilling: No report

The meeting adjourned at 7:46 P.M.

Sign:

Attest:

Peter Kaczmarczyk, Chairman

Larry J. Wilson, Secretary

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