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**BOARD OF ZONING APPEALS
Regular Meeting Minutes
January 2, 2019 - 5:30 p.m.**

CALL TO ORDER

ROLL CALL

INTRODUCTION OF EVIDENCE

APPROVAL OF AGENDA

APPROVAL OF MINUTES

December 5, 2018

CALL TO ORDER: Susie Johnson, Vice Chairman, called the meeting to order at 5:30 PM.

ROLL CALL: Margaret Clements, Michael McNeil, Mark Kruzan, Susie Johnson

ABSENT: Peter Kaczmarczyk

STAFF PRESENT: Larry Wilson, Director, Jordan Yanke, Planner/GIS Specialist, Jackie Nester, Senior Planner

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 December 5, 2018 minutes, carried unanimously.

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OLD BUSINESS:

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

NEW BUSINESS:

- 1. 1811-VAR-38 Rogers-Munson ECO Area 1 Variance to Chapter 825.**
2. 1811-VAR-39 Rogers-Munson Buildable Area Variance to Chapter 804.
One (1) 2.55 +/- acre parcel in Clear Creek Township, Section 2 at 3814 E Ramp Creek RD.
Zoned SR/ECO1.
****CONTINUED BY STAFF TO 02/06/2019 BZA MEETING****
- 3. 1812-VAR-40 Patzner General Contractor Use Variance to Chapter 802.**
One (1) 0.68 +/- acre parcel in Perry Township, Section 28 at 5605 S Old State Road 37. **Zoned ER.**
- 4. 1812-VAR-41 Soft Light / Wells Lawn Care General Contractor Use Variance to Chapter 802.**
- 5. 1812-VAR-42 Soft Light / Wells Lawn Care Paving Variance to Chapter 806.**
Two (2) lots of 5.64 +/- acres and 1.42 +/- acres in Washington Township, Section 28 at 945 W Simpson Chapel RD. **Zoned ER & AG/RR & PB.**
- 6. 1812-CDU-09 I-69 Towers II, LLC Conditional Use for Wireless Communications Facility (WCF), Chapter 813.**
One (1) 40.00 +/- acre parcel in Indian Creek Township, Section 4 at W Evans RD (Parcel No. 53-10-04-200-004.000-007). **Zoned AG/RR.**
- 7. 1812-CDU-10 Sonneborn /Andy Mohr Liberty Drive Inc Automotive Repair Conditional Use, Chapter 813.**
One (1) Lot of 1.38 +/- acres in Van Buren Township, Section 12 at 1833 S Curry PIKE. **Zoned IL.**
- 8. 1812-VAR-43 Bennett Minimum Lot Size Variance to Chapter 804.**
9. 1812-VAR-44 Bennett Minimum Lot Size Variance to Chapter 804.
One (1) Lot of 0.663 +/- acres in Washington Township, Section 3 at 5892 Turkey Track RD. **Zoned FR.**

REPORTS:

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

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OLD BUSINESS

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

BOARD ACTION: Johnson introduced the petition.

STAFF ACTION:

Yanke: I will just remind everyone this case actually was first heard either last April or May, so it has been around for a while. I will just do a brief summary and then I will note that I passed out some submittals that came in right before the packet went out. This is a variance for a Tourist Home, more traditionally thought of as an Airbnb type of use but it is a Tourist Home in our ordinance and the variance is for a 200 foot requirement from an adjoining principal use structure. I will just get to a couple maps here. As you will note here the Comprehensive Plan has the zoning as Agricultural/Rural Reserve. Here is a site conditions map. If you recall there was a property to the south that the structure is a 130, roughly from corner to corner and that is triggering this variance request. Here are some of the photos of the frontage along South Strain Ridge Road and then photos of the property. You will note a photo that was submitted by Mr. Carmin with some buffering that I will get to in a minute between the neighbor and that structure that is 120 feet away. I am just going through some of the pictures and the site plan. At the time everything came in we did not feel we had adequate time to evaluate the proposed commitment and that photo that was submitted. The recommended motion is to deny the design standards variance based on findings of fact. But I will not just for the benefit of everyone and I know Mr. Carmin will speak on this, some of the pictures previously and you will note some trees planted to help buffer in accordance with the neighbor to the south, the Terlizzi's if I am recalling correctly. They did submit an email to the effect that they are in agreement with that landscaping and buffer. One way you could look at it is basically there is 3 findings that we originally did not find to be adequate to support the variance and with this agreement with the neighbors and getting this commitment actually recorded would basically we think that it could fulfil that design standard purpose of the setback and the detrimental effect that it potentially was having on the neighbors. I just want to point out there were some findings that if you do recommend approval that you will just have to for the record say that it is meeting those findings. With that I will take any questions and let the petitioner mention what they submitted.

RECOMMENDED MOTION:

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

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

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

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

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

Findings:

- Approval of the variance would allow the petitioner to apply for an Improvement Location Permit to utilize an existing structure as a *Tourist Home or Cabin*, with a 130' setback distance to the adjoining southern property's principle use structure;
- The petition site is zoned Agriculture/Rural Reserve (AG/RR) and is located within the Environmental Constraints Overlay Area 1 (ECO1), with a non-residential side yard setback requirement of 50' from the side property line;
- According to ordinance requirements, the proposed *Tourist Home or Cabin* shall be located no closer than two hundred (200') feet from any adjoining property's principal use structure not currently being used as a *Tourist Home or Cabin*;
- The property to the south contains a principal use structure being used as a single family dwelling;
- The petition site currently contains two structures, dating back to 1968 and 1969: a single family dwelling and a detached garage;
- Access to the property is derived from S Strain Ridge Road, a designated Major Collector;
- No future development of the petition site is proposed at this time;
- The petition site is not located in FEMA Floodplain;
- There are no known karst areas;
- Conclusion: It would not impair the stability of a natural or scenic area;

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

Findings:

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

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

Findings:

- See Findings under Section A(1) and A(2);
- Surrounding properties are zoned Agriculture/Rural Reserve (AG/RR) and Suburban Residential (SR);
- The existing location of the structure in question would meet all other density, bulk,

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setback and area standards for a *Tourist Home or Cabin*;

- The 5.22 +/- acre parcel is a legal lot of record and is not platted;
- The proposed use of the petition site is *Tourist Home or Cabin*;
- *Tourist Home or Cabin* is defined as a building, or portion thereof, in which four (4) or fewer guest rooms are furnished to the public under the terms of a short-term lodging agreement;
- The adjoining and surrounding uses appear to be primarily single family dwellings;
- Conclusion: The character of the property included in the variance would not be altered in a manner that substantially departs from the characteristics sought to be achieved and maintained within the relevant zoning district;

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

Findings:

- The Board of Zoning Appeals may request the petitioner to address any other significant public health, safety, and welfare concerns raised during the hearing;
- Note the July 2018 Board of Zoning Appeals minutes regarding testimony from the public and comments made by staff and the Board members during the public hearing;

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

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

Findings:

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

(2) It would not promote conditions (on-site or off-site) detrimental to the use and enjoyment of other properties in the area (e.g., the ponding of water, the

interference with a sewage disposal system, easement, storm water facility, or natural watercourse, etc.); and,

Findings:

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

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

Findings:

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

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

Findings:

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

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

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QUESTIONS FOR STAFF –1805-VAR-14 – Schopp

Johnson: Do we have any questions for staff?

McNeil: Can you refresh my recollection as to what happened last time this was here?

Yanke: I included the minutes. I would have to back.

Kruzan: It was a 2 to 1 denial. Peter and myself on one side and ...

Yanke: Yeah, there was not 3 votes either way and then there was been continuances in between and a cancelled meeting and a number of things, that is why it has been so long since you heard it. But I think Mark is correct in that.

McNeil: Thank you.

Johnson: I have a question, Jordan. So, are you suggesting that with the commitment that we have received and the information from the Terlizzi's that the staff's recommendation has changed?

Yanke: It could have. We just weren't about to formally change it. Because I didn't feel like we had time. It came in between the holidays and we didn't have time to evaluate it.

Johnson: It could have, I mean, I know in the written document it has not changed, obviously. But is your recommendation different?

Yanke: Do you want to address that?

Wilson: I think we are more of a neutral stance at this point. I mean this is one land owner, it is not all of the land owners in the area.

Yanke: Yes.

Wilson: And there are other issues other than just the one side setback.

Johnson: Sure. I was just hearing him say that

Wilson: Clearly with this there is a legal basis for granting a variance without concern that the precise finding is on the ...

Yanke: I think the purpose of the design standard I could say clearly and I feel that it is being met with that agreement from the neighbor with the side setback. Because the purpose is to buffer and to have that detrimental noise too, same thing with the other finding and the commitment saying that they are going to follow all of the requirements of a Tourist Home Cabin. I think the harder one for us is the particular difficulty finding. That could go either way but I think that is why the BZA has it in front of it. Hopefully that answers it a little bit better.

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Johnson: That is helpful, yes. Thank you.

Wilson: Before it was the 200 foot distance that was the design standard that was sought to be preserved.

Johnson: Right. Do we have any more questions for the staff?

McNeil: How does the commitment resolve the 200 foot setback problem?

Wilson: Instead of, it doesn't magically eliminate the distance. But what it does is address the concern for which the design standard was established and that is basically have an adequate buffer between the adjacent land owner. By putting in the landscaping, at least I believe that will be Mr. Carmin's argument, that satisfies the purpose of the design standard.

Yanke: I think the biggest thing too is the email that we received in writing after the packet had went out by that specific neighbor saying that they are not opposed to this variance due to the landscaping and proposed commitment.

McNeil: So, it is the privacy fence and the tree line buffer?

Yanke: Tree line buffer, yes.

McNeil: Ok, thank you.

Johnson: Alright, Mr. Carmin, would you like to address the Board? Great, thank you.

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

Carmin: My name is Mike Carmin, representing the petitioner and the petitioner is also here tonight to speak and it depends on the questions you may have. Kind of taking things in reverse order, I want to address the photographs you see there and those are in the packet also, page 27. Pages 24 to 26 in the packet are the written commitment. The terms of the written commitment are what we had talked about before but formalized and I put them into this document that would be in recordable form to be recorded. If you look at the commitment, for your consideration the relevant part starts at the bottom of page 24, that statement, commitment and through the first half of page 25. The rest of it is enforcement language, and binding and recordable languages. It is the rules that are there and we talked about doing some rules the last time and this formalizes and be recorded. What is part of the rules thought that numbers 4 and 5 are probably the two that would be of most interest. The privacy fence only works if it is here. So the commitment is that's on the adjacent property, they put the fence up, so we are not taking claim to that. But if it needs to be maintained, subject to the owner of the lot, whoever it may be, that is something that we would do as part of the maintaining because we would need to maintain the buffer. The trees the petitioner has recently planted, those are pretty mature trees for having just been planted and so they will fill in and will be more substantial as we go forward. But they are already creating a pretty significant tree buffer. So, addressing the 200 foot. In the standard 200 feet separation issue could be an open pasture, it could be open land, no structure, no trees, nothing in between. There is no requirement

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and that is why we submit that the between the fence and the tree buffer, which will only get better over time, meets that concern of creating some separation has done it through those barriers and those buffers as opposed to pure and simple distance and we believe more effectively. That is why we believe it accomplishes the goal of the 200 foot separation issue. In the document I handed you there is we have done before and I will say this a little bit later again, I have looked at the staff findings. Many of the findings are fine. I think the findings do conclude various issues met. What on the document I handed out what it does do is directs you to specific staff findings that suggest that in like of this additional information would strike those findings and not approve those. I have made several proposed findings all focused on what we have on this lot. Jordan mentioned the most difficult from their perspective might be the practical difficulties. The one photograph is the one that is the packet there that shows the location of this small structure, this small cabin essentially structure on this lot. You can see how far back it is set and it is there, it has been existence for quite a while, since 1987, I believe. It shows the year of construction on the tax record as 1987, long before anyone ever thought about Tourist Cabins, separations and distances, so it is what it is where it is and we are kind of stuck with that. It's being set back that far on the lot does have an advantage thought, it creates quite a separation from neighbors across the road and any other direction. The petitioner happens to own the property immediately to the north. The neighbor most closely affected from being close would be the Terlizzi lot there to the south and that is the privacy fence and the tree line buffer. One of the proposed findings that I have submitted is that we have made these changes and it is to their satisfaction and I believe that is what they tried to express in their email, indicating they are withdrawing their objection. So, what we have then is the only issue that requires the variance is 200 foot separation. We believe there are some unique difficulties with this lot. The existing large setback from the front road which puts the structure well back on the lot. This lot and the adjacent lots are all relatively narrow, deep but narrow lots, which limits your opportunities to do placement for the improvements. The Terlizzi home was built lawfully and in a lawful place but the practical issue is that it is relatively close to the property line. It meets the setback requirements and it is lawfully built. But it does in combination with narrow lots, put the structures relatively closer together than might have been otherwise on larger lots. We have done we think a commendable effort to mitigate that issue with the commitment to maintain the fence, if we need to do that. We can't force it on them but I would suspect that they would be cooperative with whatever needs to be done on that as well as the tree buffer. Those combinations deal with the issue to allow the variance to be approved. I want to touch just briefly on other matters that came up before, they didn't just magically go away and Jordan made reference to the other issues. There were some issues raised last time about well, it's an enforcement. It certainly was. There have been enforcing actions on other family owned property. I thought we dealt with that before and I don't want to dwell on it. Because that is not this lot, it's not this petitioner. In the realm of zoning issues it is almost ancient history at this point, in terms of when those things occurred and what has happened, meaning nothing since then. I just think they are nonissues. This property with house being set so far back is a nonissue to everyone else except the Terlizzi property. I would submit the rules as you look at those, limit of 4 occupants that is the Tourist Home rule that would be applicable to this property. That is not that we are creating that standard that is the applicable standard. We are just emphasizing that it is. The limitation on the total number of people, hours of operation, they keep later activities inside the structure, as opposed to out on the patio or around the fire pit or anything else is intended to make sure it doesn't be a late night disturbance to anybody else, whatever the tenants or renters might be doing at that location. Everything considered and as you go through the proposed findings it

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just reworks those issues in a kind of finding of fact form that concludes then that allows you to conclude that we meet each of the standards required for the variance and we ask you to approve it.

Johnson: Thank you. Does anybody have any questions for Mr. Carmin? Seeing none. Is there anyone from the public who wishes to address this petition? Seeing none. We are back to the Commission for any comments or questions.

SUPPORTERS –1805-VAR-14 – Schopp: None

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

REMONSTRATORS –1805-VAR-14 – Schopp: None

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

Clements: I just have one. Is it possible to stipulate in potential approval for instance that “x” number of complaints from the Terlizzi family would result in it appearing before the Board again?

Wilson: I couldn’t hear you exactly.

Clements: Would it be possible, is it possible to stipulate that this could be approved with the condition that if there are “x” number of complaints for noise or other nuisance that the case would be reconsidered or is that cumbersome thing?

Wilson: I think that would be cumbersome. We would enforce noise violations and so on anyway.

Clements: I see. Ok.

Wilson: As a separate matter, no matter whether they are permitted by right or through the variance.

Clements: Ok.

Wilson: We do get those complaints occasionally.

Johnson: To Margaret’s question, the commitment has several requirements. If those commitments are not followed through on, would it be the county’s responsibility or the adjacent property owner’s responsibility for taking enforcement action on this commitment?

Schilling: That would be either would work. But on that very issue, looking at the commitments, if you decide to accept them, the ones regarding the fence and the screening are pretty open-ended. It would be hard to evaluate whether they are fully complying with those unless we have some measurements or standards associated with those.

Johnson: Do you have a recommendation to make those such that enforcement would be something

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that could be followed up on?

Schilling: Well, I am not sure what caused the neighbors to accept that but if they are satisfied with the existing the size and density of the existing buffer and the structure of the existing fence then we could make that clear in the commitments.

Johnson: The fence eventually is going to, I mean it's a wooded fence eventually the posts are going to rot and it's going to have to be replaced. The same with the trees. Eventually they are going to die.

Wilson: I think you can add a provision that basically says that they fence and the trees be maintained. That the fence be maintained at the existing height and the trees be maintained at the existing density.

Johnson: At a minimum of the existing density. I see, thank you.

Clements: Other than that I think that this is a wonderful example of the neighbors getting together and coming to a resolution, meeting and satisfying the requests and needs of both neighbors. I think it is a good resolution.

Johnson: I agree.

Carmin: We would do it after the fact. We will amend the commitment to verify whatever the height of the fence is and add that into the commitment that a fence at the height would be maintained and in good order or repair.

Wilson: In that case, we could just move to, your motion could be subject to commitment being signed and approved by the county attorney and by the adjacent land owner.

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

Clements: **In the matter of case 1805-VAR-14, Schopp Conditions for Tourist Home Variance, Chapter 802, I recommend that we approve it subject to the stipulated conditions about the maintenance of the solution.**

McNeil: Can I **amend your motion?**

Clements: Yes.

McNeil: **I would amend the motion, in finding B1, strike the word "not" before satisfied. In B2, insert the word "not" before promote in the conclusion. In C strike the word "not" before been in the conclusion and condition the variance on execution of the commitment concerning the use and development of the real estate.**

Johnson: Do you accept the amendment or you do you need some explanation about?

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Clement: I am putting on my English literature hat and I am trying to figure out the double negatives and the corrections you have made. But you are a lawyer, so I trust that

McNeil: It is just changing the findings.

Clements: Oh, **yes**. Ok, so **I agree** with that.

Schilling: One point of clarification, would that be with the commitments amended to address the fence and the buffer measurements?

McNeil: Yes.

Clements: Ok.

Kruzan: **I will second the entirety of the language.**

Johnson: It has been moved and seconded to approve variance 1805-VAR-14. Will you call the roll?

Wilson: The vote is on petition 1805-VAR-14, Schopp Development Standard Variance for Tourist Home. A vote in favor is a vote to approve the variance, based upon the amended findings set forth tonight and the approval of the written commitments. Margaret Clements?

Clements: Yes.

Wilson: Michael McNeil?

McNeil: Yes.

Wilson: Mark Kruzan?

Kruzan: Yes.

Wilson: Susie Johnson?

Johnson: Yes.

Wilson: Variance is granted 4 to 0.

The motion in case 1805-VAR-14, Schopp Conditions for Tourist Home Variance to Chapter 802, in favor of approving the variance with the amended findings set forth during the meeting and with the approval of the written commitments, carried unanimously (4-0).

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NEW BUSINESS

1. 1811-VAR-38

Rogers-Munson ECO Area 1 Variance to Chapter 825.

2. 1811-VAR-39

Rogers-Munson Buildable Area Variance to Chapter 804.

One (1) 2.55 +/- acre parcel in Clear Creek Township, Section 2 at 3814 E Ramp Creek RD.

Zoned SR/ECO1.

****CONTINUED BY STAFF TO 02/06/2019 BZA MEETING****

BOARD ACTION: Johnson introduced the petition.

STAFF ACTION: Petitions were continued by staff to February 6, 2019 meeting.

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NEW BUSINESS

3. 1812-VAR-40 Patzner General Contractor Use Variance to Chapter 802.

One (1) 0.68 +/- acre parcel in Perry Township, Section 28 at 5605 S Old State Road 37. **Zoned ER.**

BOARD ACTION: Johnson introduced the petition.

STAFF ACTION:

Nester: This variance for a 0.68 acre parcel, located at 5605 South Old State Road 37 and it is zoned Estate Residential. The subject property is Perry Township. Zoning here is Estate Residential surrounding zones are also Estate Residential. The Comprehensive Plan has this listed as Mixed-Residential in the future. The site conditions, basically this lot is all one lot. They combined it before adding the large structure in the northeast corner of the property. They have a home on the lot. They have a 2-car garage and then they have an accessory structure currently on the property. The slope map here just showing that it is relatively flat. The petitioner is not proposing any new structures but just for your knowledge. Some site photos here. In the upper left you are viewing south on the road there and you see the long-term rental in the photo as well. So there are tenants in that home. The bottom photo viewing north and then on upper right viewing east here and you are viewing the accessory structure there. Just a few more photos. The upper left is viewing the entrance into the structure in the bottom. Currently this structure is used for a partial personal use and then it's used also as office space and a little bit of storage for Riverway Plumbing business, which is the owners business. In the upper left, just showing the back side of the storage structure. There is a dumpster there as well for some of their scrap materials and then in the upper right one of the company vehicles there. As you can see the entire lot is gravel. Here is a bird's eye view of the property as well. The petitioners site plan showing 2 office spaces and a bathroom and then a little bit of storage. On the other half, personal residential storage. Before the petitioner was able to place this structure on the property he did go through the Board of Zoning Appeals in 2015 and some of those conditions included combining the properties, removing a few structures. At that time the petitioner requested the building for residential use and once it was approved from the Board of Zoning Appeals for the Minimum Lot Size, he went through and applied for a permit for an Accessory Structure and was granted a Residential Accessory Structure. The reason that this came before our Zoning Inspector was because an Appraiser called and asked about the commercial structure. We followed up with Mr. Patzner and confirmed it was partially used for Riverway. Had we known that it was going to be used for Riverway and the owner is not living on the property, it is not eligible for a Home Based Business, so the permit would have actually been issued under a nonresidential commercial permit. In order to move forward, the petitioner is asking for a Use Variance to add General Contractor use to the list of uses permitted in Estate Residential, which is largely residential. I just wanted to include the petitioner letter here, just asking that he would like to keep his business on the property, also note that if the Board were to approve this site that there would need to be a commercial site plan filed and design standards have to be met, including paving, parking, landscaping, things like that. The recommended motion by staff is to deny the Use Variance for General Contractor use, based on findings of fact and I will take any questions.

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RECOMMENDED MOTION

Deny the use variance (General Contractor) 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:

(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 continue the commercial use in a residential zone without living on the property;
- The proposed use would require site plan approval in order to reach compliance;
- The property derives access from S Old State Road 37, which is a minor arterial (100' Right-of-way);
- The petition site is not located in FEMA Floodplain;
- There are no known karst areas on the lot;
- There is a rental home on the property;
- 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 General Contractor 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 Old State Road 37 are 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 "General Contractor" is not a permitted use in the Estate Residential (ER) zoning district, thus requiring the variance to be filed;
- The Estate Residential (ER) zone permits: Historic Adaptive Reuse; Accessory Apartments; Accessory Livestock; Guest House; Historic Adaptive Reuse; Home Based Business; Home Occupation; Residential Storage Structure; Single Family Dwelling;

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Temporary Dwelling; Two Family Dwelling; Cemetery; Governmental Facility; Religious Facilities; Telephone and Telegraph Services; Utility Service Facility; Water Treatment Facility; Bed and Breakfast; Real Estate Sales office Or Model; Park and Recreational Services; Private Recreational Facility; or Construction Trailer;

- The site has a single family dwelling, detached garage, and residential storage structure. The 2400 square foot residential storage structure is used as residential storage, office space, and commercial storage;
- There is no substantial evidence the property cannot be utilized under one of the permitted uses listed in the Estate Residential (ER) zoning district, including the permitted use as a long term rental property;
- 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; and,

Findings:

- See Findings under (C);
- General Contractor is a medium intensity use not permitted on this Estate Residential (ER) zoned lot;
- General Contractor is permitted in in the General Business (GB), Light Industrial (LI), and High Industrial (HI) Zoning Districts per Chapter 802;
- The petitioner could file for a rezone;
- 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 Mixed Residential, which is described previously in this report. The neighboring properties are also zoned Mixed Residential in the MCUA plan. Though this area calls for commercial activity, the MCUA plan specifies neighborhood amenities and not particularly general contractor uses that are typically found in the industrial zones;
- The property does not have evident environmental constraints;

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- The proposed use and its “Medium” intensity classification in this area is not consistent with the Comprehensive Plan’s designation;
- The structure being used as an office was permitted under a residential accessory structure. No new development is being proposed;
- Conclusion: The approval does interfere substantially with the 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.

QUESTIONS FOR STAFF –1812-VAR-40 – Patzner

Johnson: Thank you. Does anyone have questions for the staff at this time? Mark?

Kruzan: This is the first time I have seen an enforcement letter in one of our packets. Is that uncommon common?

Nester: You just mean to add the enforcement letter?

Kruzan: I have not seen this document in a year, unless I have not looked carefully enough. Is this not a, I am noticing that this is third and final notice. Why is that? What happened to the first two notices?

Nester: The first two notices were basically email and conversation notices and the third and final was paper letter mailed when we didn’t receive follow-up.

Kruzan: So, it is lack of follow-up that leads to a third notice. Thank you.

McNeil: When I read the packet, are you suggesting that he made an application for this building to storage boats and things like that and then turned around and turned it into a plumbing business out of that? Is that what?

Nester: The petitioner’s letter from 2015 did state that he was going to use it for personal use, storing lawnmower, boat, other personal storage and use it is being used for particularly his office and commercial store, which we would identify as General Contractor use of the storage building.

McNeil: Is there anything in that letter that said he was going to store in there? Are there any of those things in that building?

Nester: I am not sure. I guess that petitioner would have to answer that question about whether the

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other half is used for personal storage of those items.

McNeil: Had he requested that building to be built to run a plumbing business it would have been denied?

Nester: Correct under the current zoning, yes.

McNeil: On what grounds?

Wilson: It is not a permitted use in this zone.

Nester: It is not a permitted use in this zone.

Wilson: If you don't live in the house and there is no house here, if you don't live in the house then it's not a Home Based Business.

McNeil: Thank you.

Johnson: Do we have any more questions for the staff at this time? Would the petitioner like to address the Board?

PETITIONER/PETITIONER'S REPRESENTATIVE – 1812-VAR-40 – Patzner

Johnson: If you will sign in and if you will state your name for the record.

Patzner: I am Neil Patzner.

Johnson: Do you swear or affirm that the information you about to give us is truthful?

Patzner: Yes.

Johnson: Thank you.

Patzner: To answer your question about the personal things, yes there is a boat. I did have a '68 mustang in there. But I have actually pulled that out. It is getting repaired. I do have a couple things in there. I really didn't want it to be a home based. I do have another 5 acres that I want, we through a whole thing about my 5 acres and it has been a long process to get this thing moving. When petitioned in 2015, I only had 3 employees, now I have 17. I didn't expect to blow up in this town and I was kind of forced to move vehicles and storage to areas that were not my house to put into a building that I had availability. I mean, did I have ultimately think that I was going to move this quickly and in this direction? No, I didn't. I goal still is to actually build my property on the 5 acres and move my business to the real area. This building is kind of like the fall back. I am hoping that by next December everything is going to be gone, everything is going to be different. But I am just filing for this variance just to get me from point A to point B. Am I in the wrong? Yeah, I am in the wrong. But I was not really, really not expecting to grow like I said I only had 4 employees when I filed. I had my office in my home. Next thing you know, I had to hire staff. I outgrew the

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house where I was and the reason for the variance was to try to get me from point A to point B.

Johnson: Does anyone have questions for Mr. Patzner?

McNeil: I do. In the unlikely event that you were given a Temporary Use Variance how long would it take you to remedy this issue? It sounds like you are saying you are a victim of your own success.

Patzner: I would right now I am working with Smith Brehob in developing the 5 acres and we are trying to push that as fast as through and as soon as we can break ground, I am assuming if everything goes well I thinking I would be out there by sometime next year.

McNeil: What if things don't go well?

Patzner: Everything has kind of been approved for what I am doing, so if anything doesn't go well then I guess I would be forced to buy another building and move.

McNeil: You are saying if you had a Temporary Use Variance until next December you would get it done.

Patzner: I would get it done.

Johnson: Yes?

Kruzan: Since this is a legal body I want to make sure we get the exact. When you say December of next year, you are talking about December of this year right?

Patzner: Yes, December of 2019. I want to be moved out before 2020.

Kruzan: Pardon me?

Patzner: I want to be moved out before 2020.

Kruzan: So, you do mean 2 years?

Patzner: No. January 1st, 2020.

Kruzan: Sorry, I thought you said 12 of 2020.

Patzner: My ultimate goal is to be out there completely by December 31st before the 2020 year.

Kruan: Ok, thank you.

SUPPORTERS - 1812-VAR-40 – Patzner: None

FURTHER SUPPORTERS - 1812-VAR-40 – Patzner: None

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REMONSTRATORS —1812-VAR-40 – Patzner: None

ADDITIONAL QUESTIONS FOR STAFF —1812-VAR-40 – Patzner: None

FURTHER QUESTIONS FOR STAFF - –1812-VAR-40 – Patzner

Johnson: Does anyone else have additional questions for Mr. Patzner? Seeing none. We are back to the Commission for any additional questions or comments.

McNeil: I have a question. Do we have the authority to grant a Temporary Use Variance?

Schilling: I don't believe that you do Michael. I guess in a situation like this if you felt that it was going to be resolved by December of this year that we would just hold that off as an enforcement action until then. You could table this until December of next year and see how things are going, or this year, yeah, and then dismiss it if it was resolved.

Kruzan: Could we table it until July 1st and get a status update and if it's looking like December is really going to happen hold off, continue to hold off and if it looks like nothing has changed and nothing is going to change, then we may as well just deny that at that point?

Schilling: Certainly.

Wilson: I think staff would recommend a fairly short time period. This is an Estate Residential zone and the permit went in as a residential use, not for 3 or 4 employees. It went in as a residential storage structure and it is not really fair to the other neighbors in the Estate Residential to have it turned into a Light Industrial zone, for any reason.

Clements: Have we received complaints from the neighbors?

Nester: No.

McNeil: No remonstrators?

McNeil: No.

Johnson: I have one other question. Mr. Patzner came before the Plan Commission for this rezone, correct?

Nester: Correct.

Johnson: And how far is that location from this location?

Nester: It is 4750 South Walnut Street Pike is probably not that far.

Patzner: It is a half a mile.

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Johnson: I guess the reason I asked that is the Plan Commission sought fit to rezone a property that is within a stone's throw of here to be, to accommodate his plumbing business full tilt as it were, so it seems to me that giving him this opportunity of July makes sense knowing that we granted the approval to do this business just a few feet down the road.

Wilson: Actually the Plan Commission made a recommendation to the Commissioners who upon public notice passed an ordinance rezoning the property, which is different than the BZA. It is a different set of procedures.

Johnson: It is a different procedure but the outcome is the same, right?

Wilson: Well, but the whole idea is clearly he could go on this property and ask for rezone to zone it Light Industrial and it would be permitted under that use. But he is requesting a Use Variance which I think Dave would say is a different set of criteria.

Schilling: Yes.

Johnson: I guess my point is you had said something to the fact that the people that are right next to this because it's a Residential Estate have a certain expectation and therefore we need to take more of an expedited path to compliance. To me doesn't kind of really hold because just a few feet down the road we have approved a plumbing business.

Wilson: I don't have a problem with the July deadline but again, this shouldn't go on forever.

Clements: I think essentially we are just kind of approving his business plan, that it is just taking a while to get things done sometimes, right.

Nester: Just as a note, I have not received a site plan filing for the other business.

Kruzan: That is the kind of thing I would want to know. I just threw out July 1st.

Wilson: When was it a rezone to Light Industrial?

Nester: It was rezoned in the summer of 2018.

Kruzan: I appreciate what you are saying. I completely understand it and that is your job and you also are watching out for the interest of the public at large in what you are doing. I am not a big fan of that fact that it took 3 notices to get the petitioners attention apparently. I don't know if that is accurate or not but we all have our things and life gets busy. But I do feel when I used to work at the city there was times that city enforcement people would come and hand me a piece of paper with a problem in town and it was a sign ordinance violation. I would say I am going to go ahead and consider that and put it in the stack and my guess is that it's still sitting on a desk somewhere. Because no one complained and it just struck me as we are trying to make this all work. I guess that is where I am on this. I will say if someone, if a neighbor where to come forward and say, hey, look there are trucks going in and out of there, this thing is operating as a business and I don't understand why you are letting it go. I would encourage the Board to reconsider it faster than July

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1st. That is not an open invitation asking people to do that but I think it is possible that it might be somebody coming out. What your presentation says is that occasionally employees would go to pick up parts and all. They take their trucks home with them. Is that the case?

Patzner: Correct.

Kruzan: Unless all of that changes and people start to see something they really don't like and come back to us, then I think it is worth an effort to try to make this work and in that spirit, **I will move that we table this until July 1st.**

Nester: Right now on this Estate Residential lot I will say, we don't have a site plan or anything for this lot. So if something did change and this was continued to July, between now and July we would have no enforcement action basically if this is continued and he would be able to continue the business.

Kruzan: Tell me your, I am sorry I don't mean to be impolite, but tell me your point.

Nester: I am just saying if more employees started to come to house and to this storage structure and park there and there was a nuisance, then we would still not be able to enforce and we would be waiting until July. Because we don't have a site plan or approval.

Kruzan: Can this Board, David, resurrect a case that's been tabled?

Schilling: Yes.

McNeil: I have a question. What sort of, after the enforcement action was initiated what sort of penalties can you start applying to this petitioner?

Schilling: We can write citations of about \$250, I believe. Yes. But we typically hold off if there is some active attempt to bring the use into compliance.

McNeil: It seems to me that if we are going to table this there are to be contingent penalty for the petitioner if it turns out that he doesn't do anything that he is telling us he is going to do tonight. Can we do something like that or can we let you decide an appropriate?

Schilling: That would just be a matter of enforcement, asking the court to impose a fine and the court has discretion to do that based on each day of violation. About all that we can do is to continue to write citations on a weekly or daily basis. That would add up and we could waive those I suppose at the end. But typically we just wait and see.

McNeil: I think that maybe you ought to just continue to issue noncompliance and let them build up and if he does what he says he is going to do, we waive all of the penalties, if he doesn't then he has got a big penalty to pay. Is that something that you can live with?

Patzner: I can live with it as long I have it in writing that you guys are going to forget it if I have moved in a year.

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Johnson: Do we have motion? Mark, yeah...

Kruzan: Technically, we are kind of violating our own rules of order here in that tabling motions aren't debatable. Boy, I don't know how, I would recommend an attorney talk to you before I would agree to that. But I have just made a **motion to postpone action until, I said July 1st but I should say until our July meeting.** I don't know when that is.

Nester: Do you want to hear from the public as well? I don't know if you have asked for public comment.

Johnson: Thank you for that reminder. Should we get a second before we move to the public?

Kruzan: Well, if you do that then we can't.

Johnson: Ok. Thank you. Do we have anyone here from the public who wishes to speak to this petition? Seeing none. Yeah.

Clements: I **second** Mark's proposal.

Johnson: We have a motion to table the petition until our July meeting and a second. Will you please call the roll?

Wilson: Ok, the vote is on petition 1812-VAR-40, Patzner General Contractor Use Variance. The motion is to continue the Use Variance hearing until the July meeting of the BZA. A vote in favor is a vote to continue. Michael McNeil?

McNeil: Yes.

Wilson: Mark Kruzan?

Kruzan: Yes.

Wilson: Susie Johnson?

Johnson: Yes.

Wilson: Margaret Clements?

Clements: Yes.

Wilson: The petition is continued until July.

The motion in case 1812-VAR-40, Patzner General Contractor Use Variance to Chapter 802, in favor of continuing this petition until the July 2019 Board of Zoning Appeals meeting, carried unanimously (4-0).

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Kruzan: I do think that it should be stated that all of these concerns that Michael has brought up are present and

Clement: There will be a record of it.

Kruzan: Yeah, there will be a record of it. That should be motivation.

Patzner: Thank you.

Kruzan: Thank you sir.

Clements: Good luck.

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NEW BUSINESS

4. 1812-VAR-41 Soft Light / Wells Lawn Care General Contractor Use Variance to Chapter 802.

5. 1812-VAR-42 Soft Light / Wells Lawn Care Paving Variance to Chapter 806.
Two (2) lots of 5.64 +/- acres and 1.42 +/- acres in Washington Township, Section 28 at 945 W Simpson Chapel RD. **Zoned ER & AG/RR & PB**

BOARD ACTION: Johnson introduced the petition.

STAFF ACTION:

Wilson: I am handling this tonight for Tammy Behrman. This is variance 1812-VAR-41, a Use Variance for a General Contractor Use for Soft Light, the owner, and Wells Lawn Care is the petitioner. The second variance is 1812-VAR-42, which is a development standard variance from the Paving requirement of Chapter 806, should the Use Variance be granted. This is located on what is now I-69. If you know where the Bakehouse Bakery is, this is the Soft Light property which was formally a furniture store, lamp store. It is the building with the billboard right above it. It is zoned 3 different zones. The parcel that we are talking about is zoned PB, which is Pre-Existing Business, which is under this case the furniture business was classified as Low Intensity Use. It is also zoned Agricultural/Rural Reserve and partially Suburban Residential. There are subdivisions immediately to the west of the property. The Comprehensive Plan shows this as being Rural Residential and next to it Farm and Forest. The Farm and Forest is green and the beige is Rural Residential. We did not see this as potentially business or industrial primarily due to the lack of access to I-69 well as the lack of necessary infrastructure such as sewer and other services. The land is basically fairly level. It is a long strip next to the interstate. As you can see, there is very little slope on the site and here are the pictures. You can see the first one is looking at the Bakehouse from the site. The one to the right is the tree line between this property and a residential subdivision and the bottom is actually a picture of the building. Again, there is pictures of the site. It is immediately adjacent to the interstate. This is the site plan. I am not sure what you can see. I will try to describe this and the petitioner will come forward and explain the site plan. In effect they are establishing parking for a land care business. We consider a lawn care business a general contractor. Because of the number to trucks and equipment going in and out. There is also plans to put a nursery on this site. A nursery is a permitted use under Agricultural/Rural Reserve but a general contractor lawn care business is not. Maybe you can see this a little bit better, basically there is the existing building and below that existing building there would be a greenhouse, a 50' by 80' pole barn building for equipment, a 50' by 150' gravel track for trailer parking, 40' by 70' mulch bins, and an estimated 60' by 70' semi-truck turnaround. There would be a 50' foot setback which is the red strips on either side of the actual business activity. Our recommended motion is to deny the Use Variance, primarily because we typically due recommend to deny a Use Variance if there are other uses that could be made of the site that fit the ordinance. In this case, any Pre-Existing Business use that's of a low intensity use category could be used for this site, including a furniture store which was what it was before. In regard to the Design Standards Variance, should you approve the Use Variance, we are recommending that the variance to the Paving requirement be denied for the reason that it is adjacent to a subdivision and we want to control the dust.

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RECOMMENDED MOTIONS:

Deny the use variance (General Contractor) to Chapter 802 based on the findings of fact.

Deny the design standards variance request from the Surfacing Requirement of Chapter 806 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:

(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 establish a general contracting business dealing with lawn care and landscaping;
- The proposed use on the property would require full compliance under a commercial site plan filing;
- The property derives access from an unconfirmed easement W Simpson Chapel RD, which is a major collector road;
- The petition site is not located in FEMA Floodplain;
- There are karst areas adjacent to the lot and one feature that is a possible karst feature;
- 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 general contractor 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 W Simpson Chapel RD are commercial, religious 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 “General Contractor” is not a permitted use in the designated low intensity Pre-

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existing Business (PB) nor the Estate Residential (ER) nor Agriculture / Rural Reserve (AG/RR) zones, thus requiring the variance to be filed;

- The site was impacted by the INDOT right of way acquisition and loss of a nearby access to a state highway;
- There is no substantial evidence the property cannot be utilized under one of the permitted uses listed in the Agriculture / Rural Reserve (AG/RR) or Pre-existing Business (low intensity uses) zones zoning districts;
- Non-residential setbacks in the AG/RR zoning district are 50' for all sides of this petition site zoned AG/RR;
- A rezone to a commercial zone that accommodates the 'General Contractor' use would reduce the side setbacks to 6';
- 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; and,

Findings:

- See Findings under (C);
- General Contractor is a medium intensity use not permitted on this Pre-existing Business (PB) zoned lot;
- General Contractor is permitted in in the General Business (GB), Light Industrial(LI), and High Industrial (HI) Zoning Districts per Chapter 802;
- The petitioner could file for a rezone;
- There are 84 uses permitted in the AG/RR zoning district per Chapter 802;
- There are 78 low intensity uses permitted on the designated low intensity PB zoning district 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 Rural Residential, which is described previously in this report. The neighboring residence is also zoned Rural

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Residential in the MUA plan;

- There are karst features located to the west of the petition site and an interstate to the east;
- The proposed use and its “Medium” intensity classification is not 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;
- The “General Contractor” commercial use will be required to meet all site plan requirement including septic system approval;
- 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.

FINDINGS OF FACT: Surfacing Requirement Variance to Chapter 806

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 maintain a soft surface parking lot (compacted aggregate stone) as shown in the draft of the petitioner’s site plan (Exhibit 2). This is in place of the standard hard surface paving requirement per Chapter 806 of the Monroe County Zoning Ordinance;
- The variance would waive the design standard requiring paved aisles, driveways, and parking spaces as required by Chapter 806;
- The proposed development is on the norther portion and appears to meet buildable are requirements for structure placement and construction;
- The driveway and circulation/parking area will be utilized by employees’ personal vehicles and company vehicles associated with a General Contractor use;
- The petition site must incorporate one accessible parking space, meeting ADA requirements;
- The proposed development shall meet required setbacks;

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- The Drainage Engineer can impose specific design requirements during formal site plan review, which is required prior to the site being occupied as a General Contractor;
- The adjoining lots are primarily consisting of residential uses to the west on the parcels the unsurfaced parking is proposed;
- The northern portion of the petition site drains west towards karst features;
- The petition site is adjacent to Interstate I-69 right of way;
- 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 A(1);
- The site gains access from an un-verified ingress / egress easement that access W Simpson Chapel, a major collector road;
- The proposed development has no foreseeable negative impact on planned transportation facilities or utilities;
- A request has been made for the petitioner to provide document verifying the ingress/egress easement;
- The existing driveway is paved and lined on the west side by large, mature evergreen trees;
- There is a small existing paved parking area adjacent to the existing structure on Parcel 1;
- W Simpson Chapel Rd is an access road for I-69;
- 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 A(1) and A(2);
- The petition site is zoned low intensity Pre-existing Business (PB) and the Estate Residential (ER), and Agriculture / Rural Reserve (AG/RR) zones;
- Surrounding properties are zoned Pre-existing Business (PB) and the Estate Residential (ER), and Agriculture / Rural Reserve (AG/RR) zones;
- If the variance request is approved, the petitioner will still be required to obtain site plan approval and meet development standards including Height, Bulk, Area and Density requirements for the PB, AG/RR and ER Zoning Districts;
- Part of the petition site is paved per previous site plan approval, totaling

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approximately 8,276 square feet;

- The petition site is not within the Environmental Constraints Overlay Area;
- The petitioner’s driveway access gains access through the Scholar’s Inn Bakehouse baking facilities;
- Conclusion: The character of the property included in the variance would be altered in a manner that substantially departs from the characteristics sought to be achieved and maintained within the relevant zoning district;

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

Findings:

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

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

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

Findings:

- See findings under A(1) and A(3);
- According to Chapter 806 of the Monroe County Zoning Ordinance, the purpose of the off-street Parking and Loading chapter is “to ensure proper and uniform development of parking areas throughout the County Jurisdictional Area”;
- Conclusion: The specific purposes of the design standard sought to be varied would not 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);
- 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;

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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:

- The petitioner has applied for this variance, which would reduce site plan requirements;
- The surfacing requirement is a standard compliance cost similar to other approved projects in the area;
- There are no unique physical or site characteristics that would make compliance impractical;
- Existing regulations have deemed paving and incorporating bio-retention practices as the minimum acceptable standards for parking and associated driveway and aisle areas;
- Conclusion: There does not appear to be practical difficulties in the use of the property as defined in Chapter 801;

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 –1812-VAR-41 & 1812-VAR-42 – Soft Light/Wells

Johnson: Thank you. Do we have any questions for the staff?

McNeil: Is the property currently empty?

Wilson: I believe that has been empty for a while. I can't give you the exact time but I know that there has been numerous proposals come forward on it as far as using the property.

McNeil: Do you know when the petitioner purchased the property?

Wilson: I don't think he purchased it yet. I think it is subject to a purchase contract. It is purchase contract subject to the zoning being approved.

McNeil: Thank you.

Johnson: Any more questions for the staff?

Clements: I have just one. On the aerial view if you could make sense of it for me? On page 96

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of the packet, the one with the arrows and everything. That bottom part of the green dotted line, what are those squiggles? I wasn't out there. Do they already have trees, nursery?

(Inaudible)

Clements: Ok, great. Thank you.

Wilson: I was going to say aliens, that's more logical.

Clements: You know when you go out to a tree farm you know they have the paths already laid out like that.

Johnson: Any additional questions? Seeing none. Mr. Carmin.

**PETITIONER/PETITIONER'S REPRESENTATIVE –
1812-VAR-41 & 1812-VAR-42 – Soft Light/Wells**

Carmin: My name is Mike Carmin, representing the petition and Derek Wells, the petitioner, is also present. The property is still owned by Soft Light. It is a potential purchase subject to being able to move his business there. Page 76 of your packet is the beginning of the staff report on these petitions and they include there the definition of General Contractor. If we get nothing else accomplished with new ordinance coming in our lifetime, I hope and I know there are people working hard on it, this has to change. You cannot put Derek Wells' lawn care business in the same category as Crider and Crider and Weddle Brothers and all the other General Contractors, and yes it is. I mean, that is the problem. This definition and staff's interpretation of this definition puts this little lawn care business in the same classification as Crider Paving, Crider and Crider, Weddle Brothers Constructions, Snider Trucking, all of them as being General Contractors and that has to change. It makes no sense. How is going to change? Are we going to get classifications of contractors and small contractors? Look at the definition. An individual, Derek Wells, who contracts to perform work, lawn care, on a large scale. There was a comment made earlier about things are vague on the tree buffer and the fence and maintaining that. What is more vague than large scale? How do we know what that is? Something has to change. So, what we are confronted with now is trying to deal with that reality of that is what it is and this a court of law we are appealing and trying to argue there should be a different interpretation. Right now under the ordinance, if it's not classified as a General Contractor, its nothing. It's not a business. It's not a permitted use because your ordinance is a detailed ordinance and your council has said if it's not on that list, you can't do it. So if it's not a General Contractor there is nothing else that it's going to fit either and that is the definitional problem of the limitations of the definitions. That is the reality that he is confronted with wherever he goes with this business. Back to this specific variance, Use Variance. Look what you have there. You have the Soft Light property in the blue lines. It's technically in 2 tracts. The one piece is Pre-Existing Business zoning. That is the site that lost about half of or a good chunk of to the right-of-way taking for 69. The old outlet building, the retail building that the glass display case you saw with the lighting fixtures in, that is gone. That was gone in the taking. The Soft Light business has other accessory buildings on that same lot and that is the one that Mr. Wells would like to put his office in. But because he is rated as a General Contractor to put his office in that building means it has to be a permitted General

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Contractor use. He can't even put his office in there. It is not a question, at least on that piece of equipment. But he does want to add to south of that office building that's one of these other photographs with all of the arrows that shoots off of the pole barn building that would be added to be able to house some of his equipment. When we get to talking about the Paving Variance that is the issue of wanting to use stone lots instead of paved lots for this equipment and I will come back to that one. But I want to focus now on the Use Variance. There are some oddities here. You noticed the, on earlier photograph you asked about the lines. The southern half or so of that long, narrow piece that is zoned Agricultural/Rural Reserve except for the little piece up there that is part of the residential zoning next to that subdivision. I don't know why. I don't think staff know entirely how that happened or why that happened. It happened some time ago. But if you look at an aerial photograph you will see that the back of that subdivision plat area that is zoned off of Jocedan Court, or however that is pronounced, is actually zoned for residential use. Then we have most of it Agricultural/Rural Reserve and then we have the permitted business zone, PB zoning for the rest of it. That adds some complexity on how we are going to find a use that fits out there other than wasting the land away and saying there is nothing that can be done on that part of it. The focus right now is on roughly the north half of all of this for his lawn care business. As part of that the issue would be putting out some mulch bins as part of arrows on the aerial photographs trying to show for his own use, not for sale to third parties and not retail sales, not wholesale to other contractors. But as part of his lawn care and landscaping business he needs access to grades of mulch, some stone, some products that he uses in that lawn care landscaping business. The bins, some similar to what's used but on a smaller scale to Castle Mulch, if you are familiar with that out on Old 37 Business North. Mulch Castle or Mulch Castle is out there and we are talking about bins, some place to store his product that he uses in his business. But that again, is part of the General Contractor use, which means if he were to put those bins down in the Agricultural/Rural Reserve, then it's not a permitted use in the Agricultural/Rural Reserve zone. So we have a long, narrow lot that I am not yet convinced is suitable for much of anything else. What are they going to do with it? I would tell you in the future one possibility that he is considering is does that south half of it suitable for a tree farm? When you look at road access, you don't see any road access to this. It is an easement that comes out of north, past the Bakehouse property into this. There is no sewer out there on this property. This is not going to be a multi-lot residential property development ever. With the cost of sewer extensions, it is just not going to happen. There is no access except at the north end which again discourages much of the southern half of it. We have a mixture of 3 different zones and we have as General Contractor use that is pretty low level, low intensity as General Contractor uses go. The landscape business, the mulching would be permitted in that Agricultural/Rural Reserve zone. The mulch is a use that is tied to his lawn care business which throws it into the General Contractor use. The request for the use variance is to allow him to make use of the existing business building zone that Soft Light has there to put his office in it. But we would have to have the General Contractor permitted use even in the Agricultural/Rural Reserve zone to allow him to park equipment, put a pole barn building there and to store his product that he uses in the lawn care landscaping business, the mulch and stone grades, it would be several bins. That is the request. What I have given you proposal and staff findings, for the most part they do not mitigate approving this. I suggested that it is really mitigating the conclusions that say not various things are found. Because I think they are. But I have given you several proposed findings that I think would support approval under each of those criteria required for the use variance. Those proposed findings all focus on the difficulties with development of this land with the long, narrow shape, the limited use with this General Contractor would make of it. You notice

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that up there where we are talking about putting the pole barn building and the parking it's not adjacent to residential uses. Now, that is an Agricultural/Rural Reserve zone there. It is vacant. The photograph show you that green square in there to the west is undeveloped at this time. You saw a lot of trees in those photographs. You have got 50' foot side yard setback buffers on both sides so it limits development down to essentially the middle of that long, narrow strips. All of those things I think come together I think to create hardships with the use development of this and with the low volume intensity use that the lawn care business would be. As for the paving variance, I mean, I ask the question, why do you want to keep paving Agricultural/Rural Reserve ground? Well, it's Agricultural/Rural Reserve but it's not really agricultural ground. Well, if it's not agricultural, then zone it something else. Don't call it agricultural ground and then say those aren't really the standards. But we keep paving agricultural ground, why? Larry made passing reference to dust. We don't want dust. We got past that issue years ago. That was actually predates all of you people. I am the old timer in the room at this moment, well, Dave is pretty close but I have got him by a couple of years. But I remember those arguments in the beginning when we were doing the limestone, gravel lots, dust migration was a significant concern and we wanted to stop that. Then we were paving everything. Everything is regarding paving. Now, you have not faced it many times. The Plan Commission has seen it a lot more in terms of waivers, requiring everything to be paved, which increases runoff, it adds the petroleum product on the ground to whatever that adds to the runoff and the discovery that stone lots per say, are not dust migration problems, not by themselves. Look at the nature of this. This is not, particularly this use is not traffic in and out every hour of the day. The guys get their equipment, the mowing equipment and they go to the job sites and they come back at the end of the day. I can't guarantee it's only once a day but primarily the use is in and out for pieces of equipment once a day. They don't go back and forth every hour between jobs, so it's pretty limited traffic use on stone. There is large distance between the areas that are being proposed for the parking area and the access drive with large setbacks from the residential uses, plenty of space there. I don't believe dust migration would be a problem but that is the performance standard that is in the ordinance already and if dust migration is a problem there are things that have to be done, from wetting it done on a periodic basis to other control factors. I don't know if you have, certainly the Plan Commission has seen some of those issues years ago, 3D Stone out on the west side, that was an issue and I remember the times that we got call from IDEM. They were going out to inspect and watching for dust migration to see if it was a problem or not. So, there are controls available and I would submit that it is a minor, almost at the point of not being an issue in this and the issue of using stone versus paving in agriculture, I think is self-evident, the value of that. So, that's the variance that we request in order for Mr. Wells to be able move his lawn care and landscape business to this site. But it does with the 3 zones there requires some manipulation to be able to do that and the use variance would allow for that.

Johnson: Thank you. Mr. Wells, did you want to address the Board? If you will sign in. Mr. Wells, do you swear or affirm that the information that you are about to share with us is truthful?

Well: Yes, it is.

Johnson: Thank you.

Wells: I do have, I know that you guys have seen that up on there. Would it be alright if I present you with just a print out of those pictures?

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Johnson: Sure.

Wells: This is basically kind of roughly what I proposed. The first picture that is on there just kind of shows a little more in detail what those blocks what are designating those for. The second page on there shows kind of how small a portion of the entire, there is 12 acres out there and so what small portion we are looking to use out of that and the third picture on there is what the existing, already paved parking is. That is north of the building that we would like to use as our office. There is just a little bit under 4,000 square feet of already parking there. To kind of further what Mike was talking about as far as the gravel, the gravel drive that would continue farther south, that is essentially no different than any other mulch company in town. There is no mulch or landscape operation that has a paved lot on all of their bins. The Speedway Mulch on the southside for example, they have about 1.3 acres of gravel that is just around their bins. The portion that we are looking at for gravel is going to be about 10 to 12,000 square feet, so we are talking about a quarter of an acre, a fifth to a sixth of the size in comparison of how much gravel that they would have at that lot. I think the amount they are looking to use for gravel isn't substantial by any means compared to the type of operation that we are looking to do. As far as, we are a seasonal business so we do have 3 fulltime employees and currently right now 11 part-time employees or seasonal employees throughout the year. So for us we are in our 14th year of business so we have kind of hit that plateau where we need a place to grow further from where we are at. The uses for the mulch bins and the greenhouse, if I were to set up a retail operation, those would all be approved on the AG/RR. The issue that Mike eluded is because we have a truck that is actually leaving that lot and mowing grass then I can't set up those bins out there essentially as a General Contractor. Because it puts us in that definition, however if we were to do a retail where we would have a lot more traffic, in my mind it would be a heavier use of that facility, that would be approved on that location. One of the pictures I was showing that drive that was first coming in there has the landscape buffers along that drive. Those are probably 30-40 year old mature trees, so you talking something that has 30-40 feet in height there along that drive that is blocking that residential side from that easement that is coming into the property. Additional that northwest quadrant that is zoned residential, we are not looking to do anything with that land whatsoever. We are basically looking to come down on that, the easement comes to right to that middle line basically that Pre-Existing Business and we look to continue that further south into the AG/RR portion. I think that pretty much covers everything for us. I mean as far as our operation, we prefer to be a Monday through Friday to 5 operation. Our guys like to do home on the weekend and home on the evenings. This isn't something that is outside of an odd hours of operations especially since it's a site that we don't do retail so you are not going to find us out there on the weekends or doing anything out there. I think that is all of the information that I have unless somebody has some questions for me.

Johnson: Thank you. Does the Board have any questions for Mr. Carmin or Mr. Wells?

Wilson: Again, Tammy Behrman was handling this case and I don't remember the exact number of vehicles and equipment that they were going to be storing on the outside storage of equipment and vehicles. Do you know the number?

Wells: Yeah so right now we have 7 vehicles in our fleet. So we have 3 mowing crews, a fertilization crew, and 2 landscaping crews and then we have a sales staff as well. So, our trucks and trailers will stay outside but all of the equipment gets stored in our warehouse.

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Wilson: Including snowplows and mowers?

Wells: Yes, that all gets stored. We don't want any of that outside. My hope is to take a property that looks very dilapidated and honestly I think is an eyesore as you are coming into our county and enhancing it to something that would look attractive. How that barn sits I don't want that barn to be the face of my business by any means so I would really like to take that and improve upon it and make something that is attractive as you are coming in. My name is part of that company so if we are going to have a property we want the upkeep to be nice.

Johnson: Does anyone have any more questions for Mr. Wells or Mr. Carmin? Seeing none. We are back to the Board for any other questions or comments.

**ADDITIONAL QUESTIONS FOR STAFF –
1812-VAR-41 & 1812-VAR-42 – Soft Light/Wells**

McNeil: I have a question. If, I am struggling with this definition of General Contractor because words mean something to me. Contractor means they build something whereas a lawnmower is where it can do a harvester combine or something, I mean if they had a combine for a hire business at this place would that be permitted?

Wilson: I think a General Contractor is someone who builds buildings but also performs services as well. A plumber doesn't necessarily build buildings. Painters don't necessarily build buildings but we all consider that general contracting. Again, as Mike pointed out it's not the greatest ordinance in the world. Clearly we need to have a small skilled general contractor and a large general contractor that has heavy equipment and we need to split that out. The problem is that if you have 7 trucks now, 7 pickup trucks now and it grows to 20 pickup trucks, very quickly it's no longer an AG use, it's more of a General Contractor use. We just have one definition and that is a problem. We will address that in the new ordinance but right now it's the one we have. It's not a nursery because it's not onsite. A nursery is fine but once you start parking 7 trucks and having employees come and go and equipment being stored on the lot, that is not a nursery. A nursery is clearly an AG use. A lawn mowing business is not an AG use. You are going offsite, you are performing services, you have employees come and park and employees come and go. Again, it's not perfect. That is kind of why we discussed that a Use Variance might be an appropriate remedy for this particular case, which doesn't mean we necessarily support a Use Variance. I think I will say that we are putting up somewhat of a soft defense on this. Because it's a tough piece of property. The other thing is part of this is self-created. The subdivision that was rezoned to allow the subdivision, as I recall. It was rezoned Suburban Residential to allow the owner of the site to do a subdivision next door. So part of this has been created that it's a difficult site to use, a subdivision has been put in next door, the site and has been reduced. You have this conflict between the Suburban Residential next door all that being said this is a tough case, we wouldn't want to rezone it ever to something else. I think one important question is there anybody from the neighborhood here in the audience?

Johnson: Right. I thought that we would move to that point. Is there anyone here from the public that wishes to address this variance request? Seeing none.

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Wilson: I don't believe we received any written remonstrance.

Johnson: Alright. Thank you.

SUPPORTERS –1812-VAR-41 & 1812-VAR-42 – Soft Light/Wells: None

FURTHER SUPPORTERS –1812-VAR-41 & 1812-VAR-42 – Soft Light/Wells: None

REMONSTRATORS –1812-VAR-41 & 1812-VAR-42 – Soft Light/Wells: None

FURTHER QUESTIONS FOR STAFF - 1812-VAR-41 & 1812-VAR-42 – Soft Light/Wells

McNeil: **I will make a motion. On case numbers, I am going to combine it, 1812-VAR-41 and 1812-VAR-42, I would move that we approve both variances based upon the proposed findings fact supplied by the petitioner's attorney.**

Clements: I **second** the motion.

Johnson: It has been moved and seconded to approve variance 1812-VAR-41 and 1812-VAR-42. Mr. Wilson, would you call the roll?

Wilson: The vote is on 1812-VAR-41, Soft Light/Wells General Contractor Use Variance and 1812-VAR-42, Soft Light Paving Variance. The motion is to approve both variances based upon the submitted findings by the petitioner. A vote in favor is to approve with the submitted findings. Mark Kruzan?

Kruzan: Yes.

Wilson: Susie Johnson?

Johnson: Yes.

Wilson: Margaret Clements?

Clements: Yes and I would like to add that this a difficult property and because of that I feel that it does deserve an exception and that in many ways it had a potential to solve problems because of its location next to the highway and your intended use. So, I think that the landscaping and maybe a tree nursery will help eliminate potential problems and that in some ways it's just the perfect use for that. Thank you.

Wilson: Michael McNeil?

McNeil: I am going to go with a yes as well.

Wilson: That is what I thought. 4 to 0 on both variances.

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The motion in cases 1812-VAR-41, Soft Light / Wells Lawn Care General Contractor Use Variance to Chapter 802, and 1812-VAR-42, Soft Light / Wells Lawn Care Paving Variance to Chapter 806, in favor of approving both variances with alternate findings submitted by the petitioner, carried unanimously (4-0)

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NEW BUSINESS

6. 1812-CDU-09 I-69 Towers II, LLC Conditional Use for Wireless Communications Facility (WCF), Chapter 813.

One (1) 40.00 +/- acre parcel in Indian Creek Township, Section 4 at W Evans RD (Parcel No. 53-10-04-200-004.000-007). **Zoned AG/RR.**

BOARD ACTION: Johnson introduced the petition.

STAFF ACTION:

Yanke: As Susie mentioned, this is a Conditional Use for a cellphone Wireless Communications Facility, pretty similar to one you saw two or three months ago. It's zoned Agricultural/Rural Reserve. The property is off of West Evans Road. Here you see it just north of Interstate 69 there as you see if curving toward the southwestern portion of the county. The current zoning has the entire area actually surrounding the property and the property itself is Agricultural/Rural Reserve. The Comprehensive Plan has it as Rural Residential as are the surrounding parcels. Here is the site conditions map, so fairly square parcel, roughly 40 acres if I am recalling correctly. The location of it if you will see in site plan that was submitted and the survey it's basically in the southwestern portion of the property meeting setback requirements. So there are no variance request with this Conditional Use. Here I placed it approximately in the location so you see that it is meeting our slope standard so you are not disturbing any areas greater than 15 percent with this proposed compound area. Here is the site plan just included some of the pictures here even though they were in the packet in case we need to refer back to them. On the right side you will see the tower. It is 199' feet with the 4' foot lightening rod so it is not required to be lighted. The survey showing the compound area there. The other thing that I should mention quickly the setback requirement for cell towers is the applicable setback of the zoning district plus the fall zone. We had the fall zone submitted at 39' feet that it would collapse basically being the maximum area or radius. The applicable setback is 50' feet for nonresidential structures, so you get 89' feet there and it's more than 89' feet from all property lines. Some photos, you can see the property marker there on the right and then just a photo on the left. There were photo simulations as part of the petitioner's submitted pack showing the 4 locations prior to the tower going in after the tower to give you a feel of what it would look like. Then a couple aerial images there since it's not existing just to give you an example, or an idea, I should say of the surrounding area, pretty forested and then of course the interstate just to the south. With that the recommended motion is to approve the Conditional Use request based on the findings of fact and I do know the petitioner and petitioner representative are here to speak on the case. I can take any questions.

RECOMMENDED MOTION:

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

FINDINGS OF FACT: Conditional Use, Chapter 813

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

- (A) **The requested conditional use is one of the conditional uses listed in Chapter 813-8 (for the traditional County planning jurisdiction) or Table 33-3 (for the former**

Fringe) for the zoning district in which the subject property is located. In addition to the other relevant standards imposed by or pursuant to this chapter, the standards, uses and conditions set forth in Section 813-8 are hereby incorporated as standards, uses and conditions of this chapter;

Findings:

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

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

Findings:

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

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

Findings:

- The zoning ordinance allows for the proposed Wireless Communications Facility (WCF) as a conditional use in the (AG/RR) 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 Agriculture/Rural Reserve (AG/RR) Zoning District has a 2.5 acre minimum lot size requirement;
- The petition site is 40.00 +/- acres;

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

Findings:

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

(E) The conditional use shall not involve any element or cause any condition that may be

dangerous, injurious or noxious to any other property or persons, and shall comply with performance standards delineated in this ordinance;

Findings:

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

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

Findings:

- The proposed Wireless Communications Facility (WCF) is required to be buffered by landscaping pursuant to Chapter 830 of the Monroe County Zoning Ordinance;
- The proposed facility is located approximately 160 feet from the nearest adjoining residential structure;
- The petition site is adjacent to thirteen (13) parcels, five (5) of which contain an existing residential dwelling according to the County Assessor's records available on Elevate GIS;

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

Findings:

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

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

Findings:

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

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

Findings:

- According to the petitioner's submittal, all federal permits as required to operate a Wireless Communications Facility (WCF) have been obtained;
- The petitioner is required to obtain necessary building permit(s) and Improvement

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Location Permit(s) from Monroe County pending approval by the Monroe County Board of Zoning Appeals;

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

(A) Wireless Communications Facilities:

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

Findings:

- The proposed Wireless Communications Facility (WCF) complies with the provisions within Chapter 834 of the Monroe County Zoning Ordinance;

(2) The Board shall consider whether a proposed facility minimizes land use impacts by being designed to accommodate future co-location by other users;

Findings:

- According to the application package for the requested use, the facility will be constructed to accommodate co-location for other wireless providers;

(3) The Board shall consider the extent to which the WCF has been designed to blend with surroundings and reduce visual impact;

Findings:

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

QUESTIONS FOR STAFF – 1812-CDU-09 – I-69 Towers

Johnson: Any questions for Jordan?

McNeil: Do all of these cell towers require a Conditional Use, no matter where they are built?

Yanke: It depends on the zoning and the height. It would actually be a case by case basis, but since this is 199' feet and it is not a stealth or concealed type structure it does require the conditional use. But it would be a case by case basis is how I would have to answer your question and depending on what zone it would be.

Wilson: I believe there are zones that allow a cell tower by right. We do have a height limitation on all cell towers of 199' feet.

Yanke: That is the maximum height.

Wilson: It is complicated because there have been statutory controls and it is ever changing.

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McNeil: Any remonstrators?

Yanke: Not thus far, so we will see if there is any that are here tonight.

McNeil: Thank you.

Yanke: To answer, well it won't answer it but each example that we have seen over the last four or five months they have all been 199' foot capped. But in Agricultural/Rural Reserved and Forest Reserve which they have been in requires that to be a Conditional Use.

McNeil: Thank you.

Johnson: Any other questions? Yes.

Kruzan: The letter from the engineer says that he understands that there may be some concern on the part of local building officials regarding the potential for failure of the proposed communication monopole. What were those concerns?

Yanke: I think I will have the petitioner respond to that but I don't know if that's just the standard statement, maybe. I don't know of any concerns actually, locally. It might just be standard issue.

Wilson: I mentioned that there are statutory limitations. One of the limitations is that we really don't have much power to challenge the submitted engineer's report.

Kruzan: I was just curious what that meant.

Clements: I can't make sense of it on this map. But could you orient me as to where the airport is?

Yanke: Yes.

Clements: Thank you.

Johnson: I think we got it.

Yanke: it is hard to see sometimes on these screens.

Johnson: Any other questions? Would the petitioner like address the Board?

PETITIONER/PETITIONER'S REPRESENTATIVE – 1812-CDU-09 – I-69 Towers

Price: My name is Matt Price. I am an attorney with the Bingham Greenebaum Doll law firm out of Indianapolis, Indiana. I am here tonight on behalf of I-69 II Towers, LLC, which is an infrastructure company that is doing work with the carrier that is seeking to locate on this facility, which is AT&T. I could pick up on a couple of the questions. I had planned on a little bit of a presentation by the overview is so thorough and we certainly agree with the recommendation of approval and believe we are compliant with each one of the criteria in the ordinance for such a

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facility. Let me clarify one thing. It is 195' foot monopole with a 4' foot lightening rod meaning the total height of the structure including the lightening rod is 199' feet. When you are below 200' feet then the tower doesn't need to be lighted. I think that may be part of the origin of the height limitation contained in the county ordinance. We submitted the matter and the ordinance here is very thorough and requires you to have all of your approvals in place before you seek Conditional Use approval from this Board. So we have submitted this to the FAA and gotten a hazard determination with regard to their review and have that letter, I believe that is part of record this evening with regard to that issue. One of the other aspects of this site is that and we were hear earlier, a couple of months ago with another AT&T facility but AT&T has a partnership called FirstNet where they have partnered with as part of a federal government plan to provide infrastructure for first responders and so part of the exercise the state of Indiana went thorough when it determined to opt into the FirstNet program was to locate sites that were deficient in terms of local infrastructure so that that infrastructure could be added, additional coverage could be provided and then that infrastructure could be made available as part of the FirstNet program. This is one of those locations. So it was identified as a public need relating specifically to public safety. Certainly will be used also by AT&T as part of providing its wireless coverage. One of things we like to talk about with regard to facilities with regard to AT&T is that these really are public infrastructure that provide an essential service to the community. Just sitting here tonight I think myself and I have watched others just going about their daily business and working through probably issues related to this meeting even, have used wireless technology to stay in communication. This infrastructure relates directly to a person's ability to have a convenient lifestyle and for them to stay in contact with their friends and family and staying in contact with their business contacts. One of the great stories of wireless communication is being able to call for help and so that is what this infrastructure if approved will facilitate in this portion of the county. I would like to add a couple other features of the facility that are important to note. One is that it is a monopole structure. It's not a latus structure. It's not a guide structure. So it's meant to be a facility that is low profile, consistent really with what we would consider in a populated area. It's not a 250-300' foot latus structure that you see in more rural areas. It is meant to have a low profile characteristic. At the height that it is at 199' feet it will provide meaningful infrastructure for other carriers to co-locate. I think in our plans we show there is spaces for at least 3 other antenna attachments to locate on the tower. When I first started doing this type of work back shortly after the passing of the Telecommunications Act of 1996, carriers were somewhat proprietary about their infrastructure and communities across the county and I think really Indiana, communities in Indiana did a wonderful job of getting ahead of the curve and really making co-location a requirement of approvals and certainly Monroe County I can remember being here when you all were adopting some of the first iterations of the local ordinance here. We are at the forefront of that so today that is considered kind of standard operating procedure and carriers have kind of set programs between and among each other that you can co-locate and then you do so and there are set rates so it's a very streamlined process. This tower would be available for that type of co-location as well. The other thing I would like to mention is with regard to the fall zone and Jordan and Larry both mentioned that there has been various changes in state law really with regard to the regulation of what we call fall zone setbacks. Basically it's that many ordinances when they originally past were written so that envisioning a tower if it failed would fall kind of like a tree so it was not, I would say it wasn't particularly uncommon, although it wasn't uniform by any means to see a fall zone setback requirement in certain jurisdictions. The legislature I believe in 2016 it may have been last year but its affective now made a law that basically said local jurisdiction could

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not require a fall zone setback provided that the petitioner submitted a certification from an engineer stating what the actual fall zone was and so that is the reason why we included in our packet the certification from the engineer which states what is true I believe of all towers facilities that AT&T are a part of which is that the towers are designed to fail inside the compounds. If it were to be a cataclysmic event that caused a tower to fail they are engineered so that they will basically crumble over and this is designed to do so within a 39' foot radius of the tower location. Making it appropriate for areas that are close to the consuming public who they are designed to serve. I was remiss in saying a couple of other things too. Let me introduce Bob Campbell as the representative of I-69 Towers, he is here to answer and questions that you may have as well. The other thing I guess I would like to point out and just close with this is that we have looked for sites across the state and in particular in Monroe County that are suitable from an aesthetic standpoint as well, we believe we have located a site here that is equipped with substantial wooded coverage around it and you can see from this simulation that there is substantial mature tree cover around this facility. It will also be landscaped at its base, which is a requirement of a local ordinance but we think that makes the site aseptically pleasing as well as providing the essential services for public safety and convenience. I am available to answer any questions that you have and certainly appreciate your time this evening and request approval.

Johnson: Do we have any questions for the petitioner?

McNeil: I do. Who is the petitioner here?

Price: The petitioner is I-69 Towers.

McNeil: So they already have purchased some right from this property owner.

Price: They have lease.

McNeil: They lease this property.

Price: Correct.

McNeil: When I look at your LTE coverage map it looks like there was a white spot right close to where you are wanting to put your tower. Did you guys say, look we need a tower here and you go out and find a property owner, knock on their door and say....

Price: Yes, that is in essence exactly the process that site selection process is undertaken is, this one is a little more complex than that in that it's a combination of AT&T's radio frequency engineers identifying a hole basically in their coverage. It was augmented I would say in this case by the FirstNet program where they received input from local first responders about areas that have less than optimal services and so that was factored in to locating towers in certain areas and then it does become a process of identifying a land owner who as a suitable location from a radio frequency standpoint. Then also one who is willing to lease their property to I-69.

McNeil: Thank you.

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Johnson: Do we have any other questions? Seeing none. Thank you. We will move to the public. Is there anyone here from the public that wishes to address this Conditional Use variance? Seeing none. We are back to the Commission for any final comments or questions.

SUPPORTERS – 1812-CDU-09 – I-69 Towers: None

FURTHER SUPPORTERS – 1812-CDU-09 – I-69 Towers: None

REMONSTRATORS – 1812-CDU-09 – I-69 Towers: None

ADDITIONAL QUESTIONS FOR STAFF – 1812-CDU-09 – I-69 Towers: None

FURTHER QUESTIONS FOR STAFF - 1812-CDU-09 – I-69 Towers

Johnson: I would entertain a motion.

Kruzan: **I move approval of case 1812-CDU-09, based on the findings of fact.**

McNeil: **Second.**

Johnson: It has been moved and seconded to approve 1812-CDU-08. Will you please call the roll?

Wilson: The vote is on 1812-CDU-09, I-69 Towers Conditional Use for a Wireless Facility. A vote in favor is a vote to grant the Conditional Use. Margaret Clements?

Clements: Yes.

Wilson: Michael McNeil?

McNeil: Yes.

Wilson: Mark Kruzan?

Kruzan: Yes.

Wilson: Susie Johnson?

Johnson: Yes.

Wilson: Variance approved based upon the findings.

The motion in case 1812-CDU-09, I-69 Towers II, LLC Conditional Use for Wireless Communications Facility (WCF), Chapter 813, 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

**7. 1812-CDU-10 Sonneborn /Andy Mohr Liberty Drive Inc Automotive Repair
Conditional Use, Chapter 813.**

One (1) Lot of 1.38 +/- acres in Van Buren Township, Section 12 at 1833
S Curry PIKE. **Zoned IL.**

BOARD ACTION: Johnson introduced the petition.

STAFF ACTION:

Again, I am handling this for Tammy Behrman. This is on 1812-CDU-10, Sonneborn/Andy Mohr Liberty Drive Automotive Repair Conditional Use, Chapter 813. It is one lot of 1.38 acres in Van Buren Township and it is located at 1833 South Curry Pike. The property is zoned IL. There is the location. There is the zoning map. IL is a carryover from the Fringe zoning previously exercised by the City of Bloomington prior to 1998. It is equivalent to our LI only that in the IL zone Automotive Repair is a Conditional Use which is why it's before the Board tonight. The Comprehensive Plan shows this as Employment. That is the purple shown there. This is shown in Employment area. This would be considered an Employment use so it's consistent with the Comprehensive Plan. There is the building. This has been before the Board once before for a side yard variance which was approved. The most recent use was a Heating/Air Conditioning contractor. The current use would be to use if for Automotive Use for Andy Mohr. There is the facility. There would need to be an updated site plan filed if this is approved as a Conditional Use for the change of use from the current use as a Heating/Air Conditioning Contractor to Automotive Repair facility. However it would probably be minimal given the fact that this is a retrofit site. Again, there is the view of the site from the air. There is a view of the site plan. There is the letter requesting the variance that is in your packet. We are recommending approve of the Conditional Use for Automotive Repair under Chapter 833, which is the chapter that incorporates the prior city ordinance into our ordinance 813 which is the chapter that allows for Conditional Use and provides the conditions. Again, based upon the findings of fact as submitted.

RECOMMENDED MOTION

Approve the conditional use for Automotive Repair Chapter 833 and 813, based on the findings of fact.

FINDINGS OF FACT

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

- 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, Automotive Repair, is permitted only through the approval of a Conditional Use Permit, per Chapter 833, Table 33-1;

B. all conditions, regulations and development standards required in the Zoning Ordinance shall be satisfied;

Findings:

- The petitioner will be required to comply with the Performance Standards set forth in Chapter 802-4 of the Monroe County Zoning Ordinance as a condition of Site Plan approval;
- The petitioner will be required to submit a site plan meeting all applicable standards for parking, landscaping, signage, etc. prior to receipt of a Land Use Certificate;

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:

- Automotive Repair is a permitted conditional use within the Limited Industrial (IL) designation does not appear to conflict with the general purposes of the Zoning Ordinance;
- The Bloomington Urbanizing Area is designated as Employment, which encourages employment-generating uses;

D. the conditional use property can be served with adequate utilities, access streets, drainage and other necessary facilities;

Findings:

- The site appears to have adequate parking and is accessible by South Curry Pike, a Minor Arterial;
- The site is served by the City of Bloomington Utilities;

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 petitioner will be required to comply with the Performance Standards set forth in Chapter 802-4 of the Monroe County Zoning Ordinance as a condition of Site Plan

approval.

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

Findings:

- The petitioner shall comply with the performance standards delineated in the ordinance, specifically, but not limited to Chapters 802, 813, 815, 830, and 833;
- The existing buildings are to remain and parking to stay in the same configuration;
- There is a 2011 variance under petition #1108-VAR-13 for a side yard setback encroachment for the building on the northern part of the lot;
- An approved site plan under petition #1204-SIT-05 is on file from 2012 that did not require landscape improvements but did add sidewalk and drainage improvements within the S Curry Pike right-of-way;
- The proposed site plan may require improvements which could positively impact the visual impression and existing environment;

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

Findings:

- The petitioner shall comply with the performance standards delineated in the ordinance, specifically, but not limited to Chapters 802, 813, 815, 830, and 833;
- The proposed site plan may require improvements which should positively impact the visual impression and existing environment;
- The existing area is within an industrial park;

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

Findings:

- The petitioner must comply with the standards set forth in Chapter 806 (Parking)
- The overall petition site has three potential points of access: Curry Pike, Industrial Drive, and SR 45, all of which are required to have paved parking areas (including striping) and parking spaces per Chapter 806 (Parking)
- The petitioner is illustrating three actual ingress/egress points via Yost and Roll Avenue on the site plan. One loading dock and two for the access of light and medium trucks to be repaired that can enter through the adjacent PUD and the drive on the southeast side of site. In addition to the two overhead doors on the south side of the building, the petitioner plans to add an overhead door on the north side of the building to limit traffic on the adjacent private roadway.

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I. All permits required by other Federal, State and local agencies have been obtained.

Findings:

- Driveway Permits will be required for the ingress/egress as part of the site plan review;
- Building permits will be required for change of use and the interior conversions of the structures.

QUESTIONS FOR STAFF – 1812-CDU-10 – Sonneborn

Johnson: Thank you. Do we have any questions for the staff? Seeing none. Is the petitioner here? If you will come up and sign in and state your name for the record.

PETITIONER/PETITIONER'S REPRESENTATIVE – 1812-CDU-10 - Sonneborn

Navan: My name for the record is Rishel Navan.

Johnson: Mr. Navan, do you swear or affirm that the information that you are about to share with us is truthful?

Navan: Yes ma'am.

Johnson: Thank you.

Navan: We are growing and since adding more we bought Stephens Honda Hyundai in March if 2016. Our body shop is just growing with the amount of business that we have and we would like this second location to help facilitate all of our customers.

Johnson: Thank you. Does anyone have any questions for the petitioner? Seeing none. Thank you sir. Is there anyone here from the public that wishes to address this variance?

Sonneborn: I am Sonneborn, part of the petitioner. Can I speak?

Johnson: Please.

Sonneborn: I am Mike Sonneborn.

Johnson: Mr. Sonneborn, the information that you are about to share with us do you swear or affirm to be truthful?

Sonneborn: Yes I do.

Johnson: Thank you.

Sonneborn: I purchased that property in 1993 and moved my heating and air business in there. The business has grown over the years. I have been retired about 3 years, still own the property but

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retired from the business. The business has been very successful, moved to a new location on Vernal Pike, so we feel like Andy Mohr and the collision center body shop would be a good fit here. If you are familiar with that site we have an lp storage facility to our north and we have been good neighbors for a number of years. Behind us was a tire store, wholesale tires, now an RV accessory place. To the south is motorcycle repair shop. We have large vehicle and automotive repair shop about 3 or 4 doors to the north, Carmichael and within a quarter mile to the south we have got a big caterpillar, heavy equipment supplier. I think the use fits into the neighborhood very well. I would urge you to approve this use.

Johnson: Dows anyone have any questions for Mr. Sonneborn? Thank you sir.

Sonneborn: Thank you.

Johnson: Is there anyone else with the public that wishes to address this petition? Seeing none. We are back to the Board for final questions, comment, or a motion.

SUPPORTERS – 1812-CDU-10 – Sonneborn: None

FURTHER SUPPORTERS – 1812-CDU-10 – Sonneborn: None

REMONSTRATORS – 1812-CDU-10 – Sonneborn: None

ADDITIONAL QUESTIONS FOR STAFF – 1812-CDU-10 – Sonneborn: None

FURTHER QUESTIONS FOR STAFF - 1812-CDU-10 – Sonneborn

McNeil: I have a motion.

Johnson: Thank you.

McNeil: On case number 1812-CDU-10, Conditional Use Variance for Automotive Repair, I would move that we approve the Conditional Use based upon the findings of fact.

Clements: I **second** that.

Johnson: It has been moved and seconded to approve the conditional use request for 1812-CDU-10, Sonneborn/Andy Mohr Liberty Drive Inc Automotive Repair. Would you please call the roll?

Wilson: The vote is on petition 1812-CDU-10, Sonneborn/Andy Mohr Automotive Repair Conditional Use under Chapter 813. A vote in favor is a vote to rant the conditional use based upon the findings. Michael McNeil?

McNeil: Yes.

Wilson: Mark Kruzan?

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Kruzan: Yes.

Wilson: Susie Johnson?

Johnson: Yes.

Wilson: Margaret Clements?

Clements: Yes.

Wilson: The conditional use is granted 4 to 0.

The motion in case 1812-CDU-10, Sonneborn /Andy Mohr Liberty Drive Inc Automotive Repair Conditional Use, Chapter 813, 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

8. 1812-VAR-43 Bennett Minimum Lot Size Variance to Chapter 804.

9. 1812-VAR-44 Bennett Rear Yard Setback Variance to Chapter 804.

One (1) Lot of 0.663 +/- acres in Washington Township, Section 3 at 5892 Turkey Track RD. **Zoned FR.**

BOARD ACTION: Johnson introduced the petition.

STAFF ACTION:

Wilson: This is barely within Monroe County. It is up along the Morgan County boundary just off 69 on Turkey Tract Road. Again, there is the current zoning which is Forest Reserve. There is the Comprehensive Plan which is Farm and Forest. There is the site. As you can see, it is a site that has been impacted by I-69 to a certain extent. Because the right-of-way has been taken for Turkey Tract Road. The site where the variance is being sought is fairly level. There is some slope in the original or toward I-69, which is probably man made and this is a picture of the site. The basically issue, one of the problems we have on this is the title of this property is really kind of unclear where the boundary line is. It would take incredible amounts of money to determine exactly where the boundary line is, so we are basing this petition having talked to the surveyor's office that we are going to presume for the purpose of this petition that the fence line is the property line. As you can see the area where the 4 orange markers are that is where the garage goes. They are asking for a 123' foot setback from the existing fence. One of our thoughts for the variance was we gave notice to the adjacent landowners so if anybody had concerns in regard to the actual property line. They could show up and address them. But not for the individual to go to the expense of a \$10,000 survey to try to get a permit for the garage. There is the existing fence line. As you can see, it is fairly distinct. It has been that way for a long time. There is the overall site plan. The 2 variances that are being sought are for lot size. It doesn't meet the Minimum Lot Size Requirement for the FR zone and secondly it would be a Rear Setback Variance from the rear setback line. The recommended motion is to approve both the design standards variances for Lot Size and the Rear Yard Setback standard under 814, based upon the findings of fact with the following; there is a storage shed right over there that appears to be on the boundary line, we are asking that be moved. It is movable. That is the one condition that we are asking as part of the variance approval.

RECOMMENDED MOTION:

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

- The 96 sf shed must meet buildable area standards or be removed.

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 further develop a parcel shown on the property report card to be 0.56+/-acres with a detached garage 18' x 21';
- The site has a ~1280 sf mobile home and a 96 sf shed;
- The lot and surrounding area is zoned Forest Reserve (FR) with a minimum lot size requirement of 5.0 acres;
- There are only two lots in a quarter square mile that do not meet the lot size requirement;
- Lot size was reduced by INDOT in the 1970's to enlarge State Road 37 from 2 lanes to 4 lanes.
- The property fronts N Turkey Track road which is a frontage road that provide access to I-69;
- A cell tower was approved in 2018 on the adjacent lot to the west which is also a working farm;
- The 0.17 acre lot to the north is vacant and was also impacted by the INDOT taking;
- There are no designated scenic areas nearby;
- 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 N Turkey Track Road, a Local Road;
- The site uses septic system;
- There is a well head on the property;
- 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 proposal would meet all other design standards other than the rear yard setback;
- Conclusion: The character of the property included in the variance would not be altered in a manner that substantially departs from the characteristics sought to be achieved and maintained within the relevant zoning district.

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

Findings:

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

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

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

Findings:

- See findings under A (1);
- Nearby uses are residential, agriculture and utility;
- 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;
- There are drainage ditches on the site that flow to the south;
- The driveway drainage pipe was in good condition;
- 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:

- If the variance is not granted, the proposed expansion cannot take place;
- The strict application of the ordinance would not allow any further development on the parcel without a minimum lot size variance;

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- Petitioner has applied for two variances, which is the minimum necessary in this case in order to further build the proposed garage on the lot in the proposed location.

FINDINGS OF FACT: Rear Setback Chapter 804

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

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

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

Findings:

Primary:

- Approval of the variance would allow the petitioner to build a detached garage 18' x 21' that encroaches approximately 17' into the rear yard setback (common fence line);
- The site has a ~1280 sf mobile home and a 96 sf shed;
- Lot size was reduced by INDOT in the 1970's to enlarge State Road 37 from 2 lanes to 4 lanes.
- The property fronts N Turkey Track road which is a frontage road that provide access to I-69;
- A cell tower was approved in 2018 on the adjacent lot to the west which is also a working farm;
- The 0.17 acre lot to the north is vacant and was also impacted by the INDOT taking;
- There are no designated scenic areas nearby;

Conclusion:

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

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

Findings:

Primary:

- See Findings A(1);
- The parcel is addressed off of N Turkey Track Road, a Local Road with a 50-foot right-of-way that runs along the eastern property line;
- The site uses septic system;
- There is a well head on the property;
- Constructing the proposed garage into the rear setback has no foreseeable impact on utilities;

Conclusion:

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

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

Findings:

Primary:

- See findings under A(1) and A(2);
- The proposal would meet all other design standards other than the minimum lot size requirement;
- The use is residential with surrounding areas being residential or agricultural;
- The Comprehensive Plan designates this area as Farm and Forest;
- The petitioner sent out notice letters as required by Rules of Procedure and included a site plan of the proposed project with assumed property lines delineated;

Conclusion:

- Approval of the variance would not alter the character of the property in a manner that substantially departs from the characteristics sought to be achieved and maintained with the relevant zoning district;

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

Findings:

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

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

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

Findings:

Primary:

- See Findings A(1) and A(3);
- The purpose of the setback is to ensure adequate light, air, privacy for adjacent properties; to provide access to any structure for maintenance and emergency services; and to preserve the general character of zoning district;
- Sufficient setback would remain after the variance to allow maintenance;
- Sufficient setback would remain after the variance to allow for access for emergency services;

Conclusion:

- Approval of the variance would not significantly impact the purposes of the design

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

Findings:

Primary:

- There is no floodplain on site;
- There are drainage ditches on the site that flow to the south;
- The driveway drainage pipe was in good condition;

Conclusion:

- There are no foreseeable detrimental conditions to the use and enjoyment of other properties that would result from the proposed expansion;

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

Findings:

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

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

Findings:

- Practical difficulties have been demonstrated in that the size and drainage restrict where a detached garage could be located;
- Petitioner has applied for two variances, which is the minimum necessary in this case in order to further build the proposed garage on the lot in the proposed location.

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

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

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QUESTIONS FOR STAFF – 1812-VAR-43 & 1812-VAR-44 – Bennett

Johnson: Does anyone have questions for the staff?

Wilson: There is a detailed site plan in your packet that the petitioner put together that I would say is one of the best site plans that has ever been submitted with a variance application.

Johnson: I have a question. What if we are wrong about the property line? What if we say we don't need the survey, we grant the variance and find out at some later date that the property line...

Wilson: The BZA doesn't have the power to quiet the title. So really any garage he builds on this is really on a risk. We are just saying that it appears to meet the zoning ordinance requirement. The safe bet would be to quiet title some way but again that is a very expensive process and unless somebody is standing there saying I won the property, there is probably no reason to do that.

Johnson: Please.

Clements: If I am not mistaken, having been in the mortgage business a long time ago in Indiana, know the fence line having been uncontested for so long, de facto kind of sets the property line if I am not mistaken.

Wilson: It can. It is complicated, there are requirements for payment of taxes. There are all kinds of exceptions based upon permissive use and so on. But, basically yes.

Clements: I don't have any problems with it. I think it's not a bad idea.

Johnson: Do we have any other questions for the staff?

McNeil: No.

Johnson: Are you the petitioner? Awesome. Thank you. If you want to come up and address the Board, that would be great. If you will sign in and state your name for the record.

**PETITIONER/PETITIONER'S REPRESENTATIVE –
1812-VAR-43 & 1812-VAR-44 - Bennett**

Bennett: My name is Sidney Bennett.

Johnson: Mr. Bennett, do you swear or affirm that the information you are about to share with us is truthful?

Bennett: Yes.

Johnson: Thank you.

Bennett: First I would like to say, with the Planning Department I work with Tammy Behrman and I would like to say that she was very helpful, very professional and represents Monroe County

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very well.

Johnson: Thank you.

Bennett: I will say right off of the bat that I am formally a land surveyor. I retired and I no longer practice. I know longer keep my license to date and an engineer. I am kind of qualified for this. When I purchased this property I was well aware of the complications regarding land boundaries and other issues and I am confident that I don't have a concern. The best case scenario would be a quiet title action but dealing with the neighbors to clarify to take care of the problems, I doubt that I will do that. I have sold my home in Morgan County and bought this as a cheaper place for my retirement years. If you had saw the place when I purchased it in September of 2017 as compared to know you would say, well, that guy has done a lot of work. I have a lot yet to go so I just want to say I have improved the property quite a lot. I need a garage. It is just an 18' by 21' and it is 22' feet off of the fence. By the way, the adjoining landowner, he and I agree the fence the boundary between the properties regardless of what a survey may show. I should have surveyed this place long ago but I didn't own it and now I can't. I could get a cheaper price of course than the average person because I know everyone that is surveying. Anyway I don't want to talk on and on. This is a simply matter compared to a lot of things that you see, an 18' foot by 21' foot garage, not too big of a deal. I assume you will approve it. I will say thanks ahead of time.

Johnson: Thank you very much. Does anyone have any question for Mr. Bennett? Seeing none. We are back to the Board for questions, comments or a motion.

SUPPORTERS – 1812-VAR-43 & 1812-VAR-44 – Bennett: None

FURTHER SUPPORTERS – 1812-VAR-43 & 1812-VAR-44 – Bennett: None

REMONSTRATORS – 1812-VAR-43 & 1812-VAR-44 – Bennett: None

ADDITIONAL QUESTIONS FOR STAFF - 1812-VAR-43 & 1812-VAR-44 – Bennett: None

FURTHER QUESTIONS FOR STAFF - 1812-VAR-43 & 1812-VAR-44 – Bennett

McNeil: I would like to make a motion.

Johnson: Please.

McNeil: **1812-VAR-43 and 1812-VAR-44, Minimum Lot size Variance and Rear Yard Setback Variance respectively, I would move that we approve both variances subject to the condition that the 96 square foot shed be made to meet buildable area standards or be removed.**

Johnson: Thank you.

Kruzan: **Second.**

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Johnson: It has been moved and seconded to approve variances 1812-VAR-43 and 1812-VAR-44. Would you please call the roll?

Wilson: The vote is on 1812-VAR-43, Minimum Lot Size Variance and 1812-VAR-44, Rear Yard Setback Variance. The motion is to approve the variances.

Kruzan: I am going to guess that this has something to do with the moving of the shed. Is that correct? I think he wanted to say something before we voted on the moving of the shed.

Bennett: I will move that but I don't have a question. How quickly do I need to have it moved?

Johnson: That is a good question.

Wilson: How much time do you need?

Johnson: What?

Wilson: How much time do you need?

Bennett: Well, it is winter time and if the ground freezes maybe it is ok. But would prefer to wait till May or something.

Wilson: Within 6 months. Is that ok with everybody?

McNeil: Let's **amend my motion to within 6 months**, please.

Kruzan: I second that.

Bennett: It is easy to move. I will get it moved.

Wilson: Ok. Again the vote is on 1812-VAR-43 and 1812-VAR-44, Bennett Minimum Lot Size and Rear Yard Setback variance. The motion is made as follows approved based upon the findings and with the development review conditions in the staff report to move the small shed on the boundary line within 6 months of tonight's decision. A vote in favor is a vote to approve both petitions. Mark Kruzan?

Kruzan: Thank you for what you said about staff. Yes.

Wilson: Susie Johnson?

Johnson: Yes.

Wilson: Margaret Clements?

Clements: Yes.

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Wilson: Michael McNeil?

McNeil: Yes.

Wilson: Both variances are approved.

The motion in cases 1812-VAR-43, Bennett Minimum Lot Size Variance to Chapter 804 and 1812-VAR-44, Bennett Minimum Lot Size Variance to Chapter 804, in favor of approving the variance with the conditions in the staff report and the condition to move the shed within 6 months, attached to the motion, carried unanimously (4-0)

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REPORTS:

Planning/Wilson: Yes I do. I wanted to bring everybody up to date because we get this question this time of year and that's when your terms expire. Just so you know. Michael McNeil is through January 1st of 2022. Peter Kaczmarczyk goes through January 1st of 2020. Margaret Clements is through January 2022. Mark Kruzan is through January 1st of 2022 and Susie Johnson is a representative from the Plan Commission is an annual appointee. So your term is up upon a new representative of the Plan Commission.

Kruzan: Are these terms or sentences?

Wilson: That is all that I have and I will note that with our new start time its 7:17.

Legal/Schilling: No report

The meeting adjourned at 7:17 P.M.

Sign:

Attest:

Peter Kaczmarczyk, Chairman

Larry J. Wilson, Secretary

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