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

**CALL TO ORDER**

**ROLL CALL**

**INTRODUCTION OF EVIDENCE**

**APPROVAL OF AGENDA**

**APPROVAL OF MINUTES**

January 2, 2019

February 6, 2019

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

**ROLL CALL: Michael McNeil, Mark Kruzan, Peter Kaczmarczyk, Bernie Guerrettaz**

***ABSENT: Margaret Clements***

**STAFF PRESENT: Larry Wilson, Director, Jackie Nester, Senior Planner, Tammy Behrman, Planner/GIS Specialist**

**OTHERS PRESENT: David Schilling, Legal**

**INTRODUCTION OF EVIDENCE:**

**Larry Wilson introduced the following items into evidence:**

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

Monroe County Zoning Ordinance (as adopted and amended)

Monroe County Subdivision Control Ordinance (as adopted and amended)

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

Cases advertised and scheduled for hearing on tonight's agenda

**The motion to approve the introduction of evidence carried unanimously.**

**APPROVAL OF AGENDA:**

**Motion to approve the agenda carried unanimously.**

**APPROVAL OF MINUTES:**

**Motion to continue approval of January 2, 2019 minutes, due to lack of quorum, carried unanimously.**

**Motion to approve minutes of February 6, 2019 meeting, carried unanimously.**

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**OLD BUSINESS:**

**NEW BUSINESS:**

- 1. 1812-VAR-45      **Winger Sign Allocation Variance to Chapter 807.****  
One (1) 0.65 +/- acre parcel in Richland Township, Section 13 at 4051 N Centennial DR. **Zoned GB.**  
**\*\*\*CONTINUED BY PETITIONER\*\*\***
- 2. 1901-VAR-02      **Geft Outdoor LLC Changeable Copy / Off Premise Sign Use Variance Chapter 807-6 (B)(2) & (5)****
- 3. 1901-VAR-03      **Geft Outdoor LLC Sign Area Variance to Chapter 807-6 (D)(2) & (3)****
- 4. 1901-VAR-04a      **Geft Outdoor LLC Sign Height Variance to Chapter 807-6 (F)(1)****
- 5. 1901-VAR-04b      **Geft Outdoor LLC Sign Side/Rear Yard Setback Variance to Chapter 807-6 (F)(2)****
- 6. 1901-VAR-04c      **Geft Outdoor LLC Sign Front Yard Setback Variance to Chapter 807-6 (F)(3)****  
One (1) 0.43 +/- acre parcel in Bloomington Township, Section 31 at 2500 W Industrial Park DR. **Zoned IL.**
- 7. 1902-VAR-05      **G. Tarter Buildable Area Variance to Chapter 804.****  
One (1) 5.0 +/- acre parcel in Van Buren Township, Section 17 at 3150 S Hoff LN. **Zoned AG/RR.**
- 8. 1902-VAR-06      **LaPlante Conditions for a Tourist Home Variance to Chapter 802****
- 9. 1902-VAR-07      **LaPlante Minimum Lot Size Variance to Chapter 804****  
One (1) 1.99 +/- acre parcel in Benton South Township, Section 35 at 1592 N Sewell RD. **Zoned FR.**  
**\*\*\*CONTINUED BY PETITIONER\*\*\***
- 10. 1902-VAR-08      **Shivam Investments LLC Changeable Copy Sign Variance to Chapter 807****  
One (1) 1.81 +/- acre parcel in Richland Township, Section 31 at 9817 W State Road 43. **Zoned PB.**
- 11. 1902-VAR-09      **Bean Blossom Ridge LLC ECO Area 3 18% Slope Variance to Chapter 825****  
One (1) 176.5 +/- acre parcel in Benton South Township, Section 28 & 29 at 1800+/- N Gettys Creek RD. **Zoned AG/RR/ECO3.**
- 12. 1902-VAR-10      **Circle K Changeable Copy Sign Variance to Chapter 807****  
One (1) 1.02 +/- acre parcel in Van Buren Township, Section 12 at 2520 S Leonard Springs RD. **Zoned LB.**

**REPORTS:**

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

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**NEW BUSINESS**

**1. 1812-VAR-45**

**Winger Sign Allocation Variance to Chapter 807.**

One (1) 0.65 +/- acre parcel in Richland Township, Section 13 at 4051 N Centennial DR. **Zoned GB.**

**\*\*\*CONTINUED BY PETITIONER\*\*\***

**BOARD ACTION:** Kaczmarczyk introduced the petition.

**STAFF ACTION:** Petition has been continued by the petitioner.

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**NEW BUSINESS**

- 2. 1901-VAR-02**      **Geft Outdoor LLC Changeable Copy / Off Premise Sign Use Variance Chapter 807-6 (B)(2) & (5)**
- 3. 1901-VAR-03**      **Geft Outdoor LLC Sign Area Variance to Chapter 807-6 (D)(2) & (3)**
- 4. 1901-VAR-04a**      **Geft Outdoor LLC Sign Height Variance to Chapter 807-6 (F)(1)**
- 5. 1901-VAR-04b**      **Geft Outdoor LLC Sign Side/Rear Yard Setback Variance to Chapter 807-6 (F)(2)**
- 6. 1901-VAR-04c**      **Geft Outdoor LLC Sign Front Yard Setback Variance to Chapter 807-6 (F)(3)**  
One (1) 0.43 +/- acre parcel in Bloomington Township, Section 31 at 2500 W Industrial Park DR. **Zoned IL.**

**BOARD ACTION:** Kaczmarczyk introduced the petition.

**STAFF ACTION:**

Wilson: These are basically Use Variances. We have 2 types of signs that are on our prohibited list. One is Off Premises signs for advertising that is not based upon the location where the sign is placed. We also have a Changeable Copy prohibition. In effect they would require 2 Use Variances in order to obtain permission to use the proposed signage. This is the Geft Outdoor LLC Changeable Copy/Off Premise Use Variance and this is located at 2500 West Industrial Park Drive, which is on the westside. It is the area off of Vernal Pike. This was actually zoned by the City and the zoning is IG, which is General Industrial on the part of the City. It is basically the industrial park that was developed I believe in the 70's and 80's. We took over when we took over the 2 Mile Fringe from the City we took over jurisdiction. There is the zoning map, which is somewhat hard to see. In the Comprehensive Plan this is showed as an Employment area in the Urbanizing Area Plan. The site is approximately 0.43 acres. It has got a pre-existing commercial building that is about 2,400 square feet with a loading dock. As far as a review of the property tax records it has been used as a location for welding gases. Mind Weld Company owned it for a while. There was a computer company that owned it for a while and I believe that at some point it was used for automotive repair. Most recently it was used for Signs Plus, which is a sign company. It is on public sewer, the site is fairly level and there are no karst features on the site. As you can see, there is the building. Industrial Drive is basically an access road off of Vernal Pike that parallels Indiana 37/I-69. Again, you can see the site where the car is in the upper right hand corner is approximately where the sign is proposed to be. The proposal is for an Off Premises sign with basically digital faces in conjunction with the Use Variances there is also a request for 4 different Development Standards Variances. We have bifurcated the proceedings in that the Use Variance would be necessary in order to proceed with Development Variances. What is proposed is a 50' foot tall off premises sign with two 672' square foot back to back digital panels. As you can see, there is the location of the sign and it would require side yard, rear yard and front yard setbacks as well as a height variance setback if the use variance is approved. As background history in the late 1990's, probably 1997, 1998 when the ordinance was updated, the Monroe County Zoning Ordinance was amended to prohibit off premises Signs and since that time no off premises signs have been permitted. Several signs as I-69 has expanded and been built, these nonconforming signs were removed and have not been replaced. In 2010 there was a Corridor Study planned that basically said, the elimination of off premises advertising signs is warranted since they further detract from the natural views, cause additional light pollution and further impact existing residences and

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wildlife. That is the Monroe County Corridor Plan from 2010. I have several factors in the Use Variance but I think we will go ahead and let the petitioner present their case. It is our position that the Use Variance is not warranted in that there are existing uses that can be used on the site, including the site that is presently being used as a sign shop. There are several Light Industrial uses that are permitted including contractor storage and other Light Industrial uses. The requirements for a Use Variance are not met in that it's not placing an unreasonable use on the property. So, I think we will go ahead and let the petitioner present their case.

**RECOMMENDED MOTION:**

Staff recommends **denial** for the use variance based on the findings of fact. The Staff also recommends tabling the adoption of findings until the Board's next meeting with direction to the staff to prepare the findings consistent with the public hearing evidence and Board discussion.

**RECOMMENDED MOTION:**

Staff recommends **denial of all four (4)** design standard variances based on the findings of fact.

**PROPOSED 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:**

1. Approval of the use variance and requested design standards variances would allow the petitioner to construct a double-sided 14' x 48' digital billboard at a 50 foot elevation. There are no billboards (either digital or conventional) in the county jurisdictional areas in the vicinity of the proposed billboard. Construction of a 14' x 48' foot billboard (either digital or conventional) at a 50 foot elevation would detract from the overall aesthetic intended by the Monroe County Urbanizing Area Plan and the Indiana 37 Corridor Plan.
2. The granting of a use variance for a 14' x 48' billboard (either digital or conventional) directed at motorists on I-69 would be injurious to the public health, safety, and general welfare of the community in that it would increase distractions along I-69 resulting in a higher probability of distracted driving in an area of the interstate where merging and lane changes are common. This would exacerbate dangerous driving conditions along this stretch of Interstate.

**Conclusion:** The approval would 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:**

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**Findings:**

1. See Findings under (A);
2. The granting of a use variance for a 14' x 48' billboard (either digital or conventional) would allow a billboard in an area where no billboards exist.
3. The proposed 14' x 48' billboard would not meet the development standards for side, rear and front setback. The sign would be twice as tall as allowed for an on-premises sign in the district.
4. The effect of the approval of the use variance on property values is difficult to determine;
5. The neighboring uses are commercial and industrial 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:**

1. The use of "Off-Premises Sign" is not a permitted use in the Industrial Light (IL) Zoning District, thus requiring the variance to be filed;
2. The Industrial Light (IL) Zoning District allows the following uses:

Uses	IL	Cond.
Beverage bottling	P	
Building trade shops	P	
Business or Industrial Center	P	20
Business or trade schools	P	
Commercial / Industrial Adaptive	P	21
Cultural facilities	P	
Day care centers	P	
Fire stations	P	
Light manufacturing	P	
Machinery and equipment repair	P	
Mini-warehouses	P	
Offices	P	
Police stations	P	
Print shops	P	
Research laboratories	P	
Schools	P	

Conditional Uses

Uses	IL	Cond.
Auditoriums	C	
Automotive repair	C	9
Churches	C	
Convalescent, nursing or rest home	C	
Historic adaptive reuse	C	
Kennels	C	
Off-site parking	C	
Outdoor storage as an accessory use	C	
Rehabilitative facilities	C	
Relocation of off-premise signs	C	
Shared parking	C	

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3. No condition of the property prevents it from being utilized for a permitted use under the Zoning Ordinance.
4. The property is being currently utilized under one of the permitted uses listed in the Industrial Light (IL) zoning district, namely “print shop”. <https://www.signsnow.com/bloomington>
5. The property has been utilized in the past under one of the conditional uses listed in the Industrial Light (IL) zoning district, namely “automotive repair”.
6. If the use variance is denied, the subject property can continue to be utilized as a “print shop” or any other permitted use set forth above. Conditional uses would be allowed upon approval of the Board of Zoning Appeals.

**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:**

1. The Industrial Light (IL) zoning district permits the following uses per Chapter 833:

Permitted Uses

Uses	IL	Cond.
Beverage bottling	P	
Building trade shops	P	
Business or Industrial Center	P	20
Business or trade schools	P	
Commercial / Industrial Adaptive	P	21

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Cultural facilities	P	
Day care centers	P	
Fire stations	P	
Light manufacturing	P	
Machinery and equipment repair	P	
Mini-warehouses	P	
Offices	P	
Police stations	P	
Print shops	P	
Research laboratories	P	
Schools	P	

Conditional Uses

Uses	IL	Cond.
Auditoriums	C	
Automotive repair	C	9
Churches	C	
Convalescent, nursing or rest home	C	
Historic adaptive reuse	C	
Kennels	C	
Off-site parking	C	
Outdoor storage as an accessory use	C	
Rehabilitative facilities	C	
Relocation of off-premise signs	C	
Shared parking	C	

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2. The subject property is currently being used as a “print shop”:  
<https://www.signsnow.com/bloomington>
3. If the use variance is denied, the subject property can continue to be utilized as a “print shop” or any other permitted use set forth above. Conditional uses would be allowed upon approval of the Board of Zoning Appeals.
4. The regulatory distinction between on-premises and off-premises signs in Chapter 807 is based on location, not sign content
5. The compelling governmental purposes of the Monroe County Zoning Ordinance restriction on signage are established by following purposes of Chapter 807:
  - (3) *maintaining and enhancing the aesthetic environment and the County's ability to attract tourism and other sources of economic development and growth;*
  - (4) *improving pedestrian and traffic movement and safety (e.g., maintaining appropriate sight distances at intersections and reducing distractions);*
  - (5) *minimizing the possible adverse effect of signs on nearby public and private property (e.g., the adverse effect of obstructing natural scenic vistas)*

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6. Improving traffic safety and the appearance of the county are substantial governmental goals. The ordinance directly serves these goals, and is no broader than necessary to accomplish such ends. **Metromedia, Inc. v. San Diego, 453 U.S. 490**

**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:**

1. See Findings Above.

2. The Urbanizing Area Plan designates the subject site as Employment, which is described previously in this report. The Urbanizing Area Plan specifically provides:

*Sign designs should be coordinated with the character of the building, and may be building-mounted or ground-mounted monument signs. Pole signs should be prohibited. Monument signs should be located in landscape beds and may include exterior ground lighting. Digital and changeable copy signs are not appropriate. Sites will typically require directional signage for visitors, employees and freight delivery.*

3. The Monroe County Corridor Plan provides as follows:

*The elimination of off-premise advertising signs is warranted since they would further detract from the natural views, cause additional light pollution, and further impact existing residents and wildlife.*

**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.

**FINDINGS OF FACT – 1901-VAR-03 –Sign Area to Chapter 807-6 (D)(2) & (3) & (4) Requirements:**

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 this variance would allow for sign area to be 2 x 672 sf = 1344 sf as proposed by the petitioner;
- Each sign face of the proposed sign is 14' x 48';
- Chapter 807-4 (D) (2) shows maximum allowed to be approximately 180 square feet (based upon building frontage)
- Chapter 807-6 (D) (3) shows allowed area to be 60 square feet;
- Chapter 807-6 (D) (4) shows allowed maximum of 600 square feet (in this case it is 180 sf);
- There are no natural or scenic areas in the vicinity of the petition site;
- 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);
- Platted right of way is shown as 50' on the Bloomington Industrial Park Phase 1 final plat;
- The size of the proposed sign area extends the sign into three required setbacks requiring additional design standard variances;
- The sign would be visible from I-69 north and southbound traffic and W Industrial Park Drive;
- The 2018 Thoroughfare Plan lists W Industrial Park Drive as a Minor Collector requiring a 90' right of way or 45' from the centerline of the road;
- W Industrial Park DR is bound by a 6+ foot retaining wall on the south east shoulder of the road;
- W Industrial Park DR is adjacent to INDOT Right of Way for I-69;
- The 2018 Thoroughfare Plan cross section includes 5' sidewalks or 8' sidepath, two 12' travel lanes and a 14' turn lane among other details for a total of 90';
- The proposed sign would be 39' from the centerline of the road;
- The sign location as proposed would conflict with the Thoroughfare's road design and encroach into right of way;
- The Monroe County Transportation Alternatives Plan lists W Industrial Park DR as a

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Moderate Priority for road improvements;

- Conclusion: It **would** 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) & (2);
- The development site is zoned Limited Industrial (IL);
- No billboard size signage has been permitted since 1997 in Monroe County jurisdiction;
- The nearest billboard signs along I-69 in the Monroe County jurisdiction are located 3.9+ miles to the north (5'x19') and 3.8+ miles to the south (9'x19' sign);
- Chapter 807 prohibits signs as the petitioner proposes and is therefore more intense than intended for any district;
- 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:**

- Findings A (1), (2), & (3);
- The site is currently used as a print shop and it already has signage for the business located on the building that meets the size requirements;
- The purpose of the ordinance is to limit sign area to protect aesthetics and public safety;
- Conclusion: The specific purposes of the design standard sought to be varied would be satisfied;

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

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

**Findings:**

- The size of the sign would detract from legally conforming sized signs for surrounding businesses;
- 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:**

- Approving the proposed sign area of 2 x 672 sf would additionally require an off-premise / digital sign use variance and three additional design standards variances for setbacks and height;
- The petition site already utilizes a wall mounted sign to advertise the existing business;
- The size of the proposed sign would not match the character of the surrounding area for Monroe County jurisdiction;
- Conclusion: There **does not** appear to be practical difficulties in the use of the property;

**FINDINGS OF FACT – 1901-VAR-04a – Sign Height to Chapter 807-6 (F)(1)**

**Requirements:**

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 this variance would allow for sign of 50’ as proposed by the petitioner;
- Chapter 807-6 (F)(1) shows a maximum height allowed to be approximately 25’;
- There are no natural or scenic areas in the vicinity of the petition site;

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

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

### Findings:

- See Findings A(1);
- Platted right of way is shown as 50' on the Bloomington Industrial Park Phase 1 final plat;
- The height of the proposed sign is taller than the surrounding 30+ ft utility poles along W Industrial Park DR;
- The sign would be visible from I-69 north and southbound traffic and W Industrial Park Drive;
- The 2018 Thoroughfare Plan lists W Industrial Park Drive as a Minor Collector requiring a 90' right of way or 45' from the centerline of the road;
- W Industrial Park DR is bound by a 6+ foot retaining wall on the south east shoulder of the road;
- W Industrial Park DR is adjacent to INDOT Right of Way for I-69;
- The 2018 Thoroughfare Plan cross section includes 5' sidewalks or 8' sidepath, two 12' travel lanes and a 14' turn lane among other details for a total of 90';
- The proposed sign would be 39' from the centerline of the road;
- The sign location as proposed would conflict with the Thoroughfare's road design and encroach into right of way;
- The Monroe County Transportation Alternatives Plan lists W Industrial Park DR as a Moderate Priority for road improvements;
- 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) & (2);
- The development site is zoned Limited Industrial (IL);
- No sign higher than 25' has been permitted since 1997 in Monroe County jurisdiction;
- A 2013 study of billboards along the I-69 corridor shows a total of 61 billboard type signs of which 33 are below the legal height, 28 are above 25' and of those only three signs are greater than 50';
- Chapter 807 prohibits signs as the petitioner proposes and is therefore more intense than intended for any district;
- Conclusion: The character of the property included in the variance **would** be altered in a

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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:**

- Findings A (1), (2), & (3);
- The site is currently used as a print shop and it already has signage for the business located on the building that meets the height requirements;
- The purpose of the ordinance is to limit sign height to protect aesthetics and public safety;
- 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:**

- The height of the sign would detract from legally conforming sized signs for surrounding businesses;
- 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:**

- Approving the proposed sign height of 50’ would additionally require an off-premise / digital sign use variance and three additional design standards variances for setbacks and sign area;
- The petition site already utilizes a wall mounted sign to advertise the existing business;
- The height of the proposed sign would not match the character of the surrounding area for Monroe County jurisdiction;
- Conclusion: There **does not** appear to be practical difficulties in the use of the property;

**FINDINGS OF FACT – 1901-VAR-04b – Sign Side/Rear Yard Setback to Chapter 807-6 (F)(2) Requirement:**

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 this variance would allow for sign to encroach approximately 11’ into a 12’ yard for both the side back and rear yard setback as shown in the petitioner’s site plan;
- Chapter 807-6 (F)(2) states, ‘All signs shall conform to the side and rear yard requirements for Buildings’;
- In the Limited Industrial (IL) zone the side setback required is 12’ and a rear setback is 12’;
- There are no natural or scenic areas in the vicinity of the petition site;
- 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);
- Platted right of way is shown as 50’ on the Bloomington Industrial Park Phase 1 final plat;
- The proposed sign area causes the encroachment into the side and rear setbacks;
- The sign would be visible from I-69 north and southbound traffic and W Industrial Park Drive;
- The 2018 Thoroughfare Plan lists W Industrial Park Drive as a Minor Collector requiring a 90’ right of way or 45’ from the centerline of the road;
- W Industrial Park DR is bound by a 6+ foot retaining wall on the south east shoulder of the road;

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- W Industrial Park DR is adjacent to INDOT Right of Way for I-69;
- The 2018 Thoroughfare Plan cross section includes 5' sidewalks or 8' sidepath, two 12' travel lanes and a 14' turn lane among other details for a total of 90';
- The proposed sign would be 39' from the centerline of the road;
- The sign location as proposed would conflict with the Thoroughfare's road design and encroach into right of way;
- The Monroe County Transportation Alternatives Plan lists W Industrial Park DR as a Moderate Priority for road improvements;
- 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) & (2);
- The development site is zoned Limited Industrial (IL);
- Surrounding commercial sites utilize the side and rear yards for storage yards, buffering and utility accommodation;
- 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:

- Findings A (1), (2), & (3);
- The site is currently used as a print shop and it already has signage for the business located on the building that meets the side and rear setback requirements;
- The purpose of the ordinance is to limit sign placement into the front setback to protect

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aesthetics and public safety;

- 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:**

- The adjacent properties are utilizing the areas as commercial storage yard;
- The height of the sign begins at 25' and would allow for that clearance;
- Conclusion: It would not promote conditions detrimental to the use and enjoyment of other properties in the area;

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

**Findings:**

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

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

**Findings:**

- Approving the proposed sign side and rear setback encroachment would additionally require an off-premise / digital sign use variance and three additional design standards variances for height and sign area;
- The petition site already utilizes a wall mounted sign to advertise the existing business;
- The large sign area causes the encroachment into setbacks;
- Reducing the sign area would eliminate the need for the side and rear setback variance;
- Conclusion: There **does not** appear to be practical difficulties in the use of the property;

**FINDINGS OF FACT – 1901-VAR-04c – Sign Front Yard Setback to Chapter 807-6 (F)(2) Requirement:**

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;***

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### Findings:

- Approval of this variance would allow for sign to encroach approximately 7' into a required 10' front setback from the right of way as shown in the petitioner's site plan;
- There are no natural or scenic areas in the vicinity of the petition site;
- 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);
- Platted right of way is shown as 50' on the Bloomington Industrial Park Phase 1 final plat recorded in 1980;
- The proposed sign area causes the encroachment into the front setback;
- The existing building from 1974 appears to encroach into the front setback and is considered a pre-existing nonconforming structure;
- The sign would be visible from I-69 north and southbound traffic and W Industrial Park Drive;
- The 2018 Thoroughfare Plan lists W Industrial Park Drive as a Minor Collector requiring a 90' right of way or 45' from the centerline of the road;
- W Industrial Park DR is bound by a 6+ foot retaining wall on the south east shoulder of the road;
- W Industrial Park DR is adjacent to INDOT Right of Way for I-69;
- The 2018 Thoroughfare Plan cross section includes 5' sidewalks or 8' sidepath, two 12' travel lanes and a 14' turn lane among other details for a total of 90';
- The proposed sign would be 39' from the centerline of the road;
- The sign location as proposed would conflict with the Thoroughfare's road design and encroach into right of way;
- The Monroe County Transportation Alternatives Plan lists W Industrial Park DR as a Moderate Priority for road improvements;
- Conclusion: It **would** 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) & (2);
- The development site is zoned Limited Industrial (IL);
- Any permitted signs on W Industrial Park DR have met the front setback requirement according to Planning records;

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- Surrounding commercial sites utilize the side and rear yards for storage yards, buffering and utility accommodation;
- 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:**

- Findings A (1), (2), & (3);
- The purpose of the ordinance is to limit sign placement into the front setback to protect aesthetics and public safety;
- 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 A, B(1)
- The front setback encroachment would detract from legally conforming signs for surrounding businesses;
- 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;

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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:**

- Approving the proposed sign front setback would additionally require an off-premise / digital sign use variance and three additional design standards variances for setbacks, height and sign area;
- The petition site already utilizes a wall mounted sign to advertise the existing business;
- The front setback of the proposed sign would not match the character of the surrounding area for Monroe County jurisdiction;
- Should improvements ever be made to W Industrial Park DR the encroachment into the front setback may hinder design and acquisition of additional right of way;
- Conclusion: There **does not** appear to be practical difficulties in the use of the property;

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

**QUESTIONS FOR STAFF –**

**1901-VAR-02, 1901-VAR-03, 1901-VAR-04a, 1901-VAR-04b, 1901-VAR-04c – Geft**

Kaczmarczyk: Ok, are you ready for a question, Larry?

Wilson: Sure.

Kaczmarczyk: This is a new one on me. Under the recommended motion, you recommend denial. It says the staff also recommends tabling the adoption of findings until the Board's next meeting, with director of the staff to prepare the findings consistent with the public hearing evidence and Board discussion. What does that mean and how does it affect deliberation?

Wilson: Based on the petition, the justification set forth in the petition was really a constitutional first amendment right to the sign and we anticipate there were will additional evidence presented by both the petitioner and perhaps by the public and we want to be able to incorporate those additional factors into the findings rather than just try to guess what the findings might be.

Kaczmarczyk: Ok, so the findings you anticipate being amending by what is said in the meeting.

Wilson: Right. At the close I think whatever decision you make we would ask that you do prepare proposed findings and we will polish those up and bring them back for the next meeting.

Kaczmarczyk: Ok.

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Wilson: Basically at this meeting you will make a decision and suggest proposed findings and we will bring those back to you for final approval. Frankly, that is not unusual for many BZA's, that findings are not prepared on the spur, that you just spend some time writing them up and reviewing the evidence that was presented so that they are consistent with the testimony and what comes up at the hearing. We do actually have in our findings a space that says, for evidence presented at the hearing.

Kaczmarczyk: That makes sense. I have just never seen it spelled out quite so clearly at the top. Alright, that works for me. Yes.

Kruzan: Is that staff's desire or a legal desire or both?

Wilson: I think it's a planning staff requirement. I am not sure whether it was discussed with Dave. Dave was out sick when we talked. So it was really from planning staff. Again, it is a request...

Kruzan: I am anticipating your offices input

Schilling: Well, I think that that practically that is the way it works out. You have to make a decision when you close the hearing, so we keep the hearing open if you think that there is additional testimony or if you want to discuss proposed findings. So you could say we want the staff to come up with findings to reflect this evening. You can give the staff direction as to which way you are heading and let's continue the hearing to keep it open to discuss those findings and approve them at the next meeting. Typically, if Board's done make findings, which they are required to do, the courts will send it back down for findings. So a delay is pretty standard.

Kaczmarczyk: Questions for staff?

McNeil: All of this type of signage or billboards, all the ones in the county are currently grandfathered in?

Wilson: Of course you have some that are in Ellettsville jurisdiction, several are in the Ellettsville jurisdiction. There are some that are in the city. But any off premise sign in the county is a grandfathered sign or perhaps received a Use Variance before my time. I don't recall having granting any Use Variances for off premise signs.

Behrman: The last one that was submitted was in 1998 and it was denied at the BZA. Everything was prior to 1997 and we do a large catalog and pictures of all of them with their descriptions. We have determined whether some of those billboards are legal and if they are illegal. The legal ones actually could be under a huge part of our ordinance and the sign part would let them maybe relocate under condemnation scenario. But if it's an illegal billboard, it's not...

McNeil: So, no one has put up a new billboard in over 20 years.

Behrman: Not that we know of.

McNeil: Thank you.

**DRAFT**

Kaczmarczyk: Any additional questions for staff? Alright, seeing none. Would the petitioner or the petitioner's representative like to address the Board? Step right up and we have got note cards. I don't know if there are any at the podium. There are some at the table behind you. If you could just put your name and address on it so we know who is here and where to reach you if we need to. Are we just skipping the sheet or using both? Sorry Larry, sheet, notecards or both?

Wilson: Well, we have their address. It is primary for people that are speaking against the petitions.

Kaczmarczyk: It makes sense. I just want to make sure I am not too confused.

**PETITIONER/PETITIONER'S REPRESENTATIVE –  
1901-VAR-02, 1901-VAR-03, 1901-VAR-04a, 1901-VAR-04b, 1901-VAR-04c – Geft**

Kaczmarczyk: Alright, if you could raise your right hand and state your name.

Blaikloch: Rich Blaikloch.

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

Blaikloch: I do.

Kaczmarczyk: Please proceed.

Blaikloch: Thank you. I am here on behalf of Geft Outdoor LLC and I have John Kissel with me also with Geft Outdoor, if there are any questions that I can't field. We are here today without waiving any of our rights as it relates to Geft's ability to exercise its first amendment rights. It is our position that the Monroe County Ordinance is an unconstitutional prior restraint on speech. Prior restraint on speech is government action that prohibits speech or other expression before speech happens. Speech through a billboard is considered speech subject to constitutional protection from prior restraints and they come in many forms and in this situation we think it is the requirement to obtain a permit before speaking or Geft is allowed to speak through the billboard. But that is a prior restraint on our ability obviously to put up a billboard to speak. The courts disfavor prior restraints especially those that give government authorities unbridled discretion in how they are going to exercise that prior restraint. We believe that the Monroe County Ordinance does that. Any prior restraint must be based on narrow objective and definitive criteria and we don't believe the Monroe County Ordinance does that and it also must have a reasonable time line for making a decision. Again, it is our position that the Monroe County Ordinance falls short there as well. The ordinance does not have clear criteria for variance approval. There are no defined criteria for approval of use or development standards standard variance in the MCO. So, for example, the MCO uses subjective criteria. Section 812-5 on Use Variance approval is subject to quote "substantially adverse manner", quote "peculiar to the property involved, unnecessary hardship, and interfere substantially" but those aren't defined terms. It is left to the discretion of the staff and this Board to make those determinations. Section 812-6 on Development Standards discussed substantially departs injurious to the public health, safety and general welfare, substantially adverse manner and practical difficulties. There is nothing in the ordinance that has objective criteria that we can determine that the BZA uses in determining whether to approve or

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deny a variance based on those standards and as a result, it is our position that the BZA has unbridled discretion which is an improper prior restraint on first amendment rights of Geft. The lack of objective criteria we believe is evident from the staff report itself. The staff report refers to aesthetics, page 19, and driver distraction, page 19. But sites no studies in the report that would suggest that this is all a driver distraction or how the staff and the BZA might ultimately conclude that this billboard would be a driver distraction. The same thing with aesthetics. It is a subjective determination without and objective criteria that we are able to discern from the ordinance. The staff report on whether the use and value of the adjacent property would be substantially affected in an adverse manner, the response is may or may not. Again, we don't know what objective criteria was applied to that determination and as a result we believe it is an improper prior restraint on speech. The staff report concludes that the variance of the sign area would interfere with or make more dangerous the use of existing transportation. But that the variance of sign height and setback would not and again there is no objective criteria from the ordinance that would allow us to determine how that conclusion was arrived at. So, it is our position that the ordinance does exactly what courts say cannot happen, it give the BZA unbridled discretion with no objective criteria, with vague and unclear terms that we are attempting to comply with and no time restraints. If we look at Indiana Code 3674918.5 and the standards there, it is our position to the extent we understand our own subjective believe of those criteria that the variances that we are seeking are not injurious to public health, safety, morals, general welfare of the community because first of all the area is industrial and commercial in nature and billboards are economic tools for businesses to use for advertising. The last digital billboards that Geft operated it had about 36-37 percent noncommercial use, so nonprofits, governmental type signage that was operating at about 62 percent commercial use. So, not only is it a valuable economic tool it can also be a civic tool as well. There is no evidence that the adjacent property will be affected in a substantially adverse manner. Again, the area is primarily zoned Industrial and Commercial and it would allow local businesses to advertise as they do, as we drove down here we see Oliver Winery signs and so forth. There is no empirical studies showing off premises signs lessen any value any more than on premises signs do for example. The need for the variance arises from a conditional peculiar to the property. The value of the property is severely limited due to a reconfiguration of Indiana Road 37 to I-69 and as a result of that the property owner is unable to take advantage of that location, which would allow the property owner to have extra income to offset the loss of traffic to his business as a result of the I-69 development and likewise strict application of the ordinance would result in unnecessary hardship in the properties use. We believe that an individual has the right to use their property unless they are properly and legally and constitutionally restricted from doing so and because it is our position that the ordinance unconstitutionally restrains speech that that in of itself is an unnecessary hardship on the property. Finally, the approval does not substantially interfere with the Comprehensive Plan. There is no residential property nearby. The sign provides and economic development benefit and tool by which businesses can grow through advertisement. There is no negative environmental impact and it does not affect infrastructure and improvements. We believe that the sign will help improve visibility to businesses along I-69 and also afford the opportunity for other noncommercial speech because of the nature of the digital sign. So, with that we would ask that the variances be approved.

Kaczmarczyk: Thank you. I have one question. You mentioned something about impact on property value. I was wondering if you have anything more specific. Has this specific property's value been impacted by I-69? Has it had a change in that last few years, etcetera?

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Blaikloch: Yeah, I believe and Mr. Kissel can correct me if I am wrong but that the traffic pattern for this business changed because of that, in a negative way, less traffic going directly by this business and as a result that that lack of traffic has had an adverse impact on the business.

Kaczmarczyk: But there is no actual hard data.

Blaikloch: I don't have any hard data, no.

Kaczmarczyk: Fair enough. Thank you. Any other questions?

McNeil: Can you tell me the difference between content of speech and the means by which that speak is expressed? It seems to me that you are making an argument that the means by which your client wants to express something is governed by the first amendment and not the content of what your client is trying to express.

Blaikloch: And I am not sure that I understand the question.

McNeil: What are they forbidden from expressing on their property? We are talking here about how it is going to be expressed. Do you agree with that?

Blaikloch: No it's an inability to make the expression in the first place. Because they can't broadcast their speech to anybody beyond the person who might be right in from of them on their property.

McNeil: You are saying the first amendment give them a right to broadcast their speech as they see fit.

Blaikloch: No, I am saying the first amendment allows somebody if they want to exercise their right to speak, they have the right to do that. They have the right, absent of your ordinance, they would have the right put up a 100 by 100 sign that offers whatever opinion that they want to put up there or commercial. The only reason that they can't is because of the ordinance which is a restraint on that speech, so respectfully I think question poses from the wrong vantage point. We can speak however we want in whatever manner that we want.

McNeil: Exactly.

Blaikloch: Unless, the government has properly restrained it and our position is the restraint of Monroe County is an improper restraint of that right to speak what they want and how they want to do it.

McNeil: Is this first amendment argument something that your client brought to you or did you bring that to your client?

Blaikloch: Well, I am not going to answer that respectfully because I think that is an attorney client answer. So I will leave it at that.

**DRAFT**

McNeil: That answers it for me, thank you.

Blaikloch: Well, I didn't answer it but ok. You can surmise from it what you want.

McNeil: What is it that they cannot say on that property?

Blaikloch: Well, they cannot put a billboard and say ...

McNeil: What can they not say?

Blaikloch: Anything, on a billboard.

McNeil: They can't stand there and express anything that they want on that property?

Blaikloch: No, not in the way they want to do it.

McNeil: There, that is the key, isn't it? How they want to do it.

Blaikloch: Right and I will get back to what I said before. They have an absolute right to say whatever they want unless a government appropriately restricts it and our point is that Monroe County has not appropriately restrained it.

McNeil: Have you initiated any declaratory judgement action on any court to pursue your supposed first amendment right to this sign?

Blaikloch: As it relates to Monroe County?

McNeil: Any court, seeking a declaratory judgement to assert your first amendment rights that you raised in your petition?

Blaikloch: Not as it relates to Monroe County, no.

McNeil: Why not?

Blaikloch: Again, that is attorney client information and frankly work product. So, I respectfully decline to answer that question.

McNeil: How is that work product? Whether you have a lawsuit pending is work product.

Blaikloch: No, you asked why. I have answered that there is no lawsuit pending.

McNeil: Thank you.

Blaikloch: Yeah.

Kaczmarczyk: Thank you. Any other questions? Go right ahead.

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Guerrettaz: Explain the properties to me. Is there one property? There is two properties there, correct?

Wilson: There is one lot, basically two separate tax parcels.

Guerrettaz: Ok. That was the clarification that I needed. So, you are requiring the variances because the ordinance doesn't support what your client wants to do.

Blaikloch: We are, yes, as a general proposition it is our belief that the entire ordinance is unconstitutional and we actually probably don't need to be here but we are trying to see if we can get the variance without taking that position.

Guerrettaz: So, the question is more I guess, you see that the ordinance is written in such a way, the text is written in such a way that requires a variance to be obtained. It is just you disagree with the construction of the ordinance that makes that necessary. Is that fair?

Blaikloch: It's a little nuance from that but our position is that the ordinance itself is unconstitutional. If it's unconstitutional, it's void and we don't have to ask for permission because it's a void ordinance. However, based on some prior rulings, we think prudent to try. Our problem with the ordinance is there are no objective criteria for us to determine whether we meet the variance standards. Does that answer the question?

Guerrettaz: Yes.

McNeil: Can you site to even a single case to support your position that ordinance is unconstitutional?

Blaikloch: No, because no case has ruled that the Monroe County Ordinance is unconstitutional.

McNeil: No, but I think a portion that you are claiming, so you are saying there is no case law on this subject.

Blaikloch: I am saying that I am unaware of a case that has held that the Monroe County Ordinance is unconstitutional.

McNeil: Are you aware of any other cases related to similar ordinances governing billboards by county ordinance?

Blaikloch: It's a challenging question. We have ....

McNeil: You have researched this issue, have you not?

Blaikloch: Yes.

McNeil: Are you aware of any cases that support your position?

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Blaikloch: Yes.

McNeil: Can you bring those to our attention?

Blaikloch: Not off of the top of my head no. Because I didn't know I was going to be arguing legal cases, but I can...

McNeil: You raised the issue in your petition, did you not?

Blaikloch: Yes.

McNeil: You are coming here. You ought to have some legal authority to support the position you asserted. Don't you think so?

Blaikloch: Well, obviously not because I didn't walk in with a list of cases. I am making the general proposition that the ordinance lacks any objective standards by which we can understand what how the BZA and how the staff are evaluating the criteria for a variance.

McNeil: So, you are asking us to take your opinion on the first amendment versus any adjudications anywhere in this country for same or similar issue.

Blaikloch: I am asking for a variance and as the Board, obviously you have an abled council over here and I think if we are getting into a case law argument perhaps we should table this and I can come back next month and provide you with those case citations. But we are trying to ...

McNeil: Are you willing to table this?

Blaikloch: No, you are asking the question. I am saying if that is what you want to make a decision, we could probably figure something out. But to my understanding this is an evidentially hearing. I am making my record and I don't have a list of cases that I can site to you as I stand here to support those propositions. But I am sure you could ask the Board's council.

McNeil: You made an argument when you came in here from the very beginning telling us that your client has a first amendment right to put up this sign, yet you come here with not a single bit of evidence or case law to support that decision. Is that correct?

Blaikloch: No.

McNeil: Show me your evidence.

Blaikloch: I have relayed the evidence. The evidence is as it relates to the different criteria as we understand them and my other evidence is we don't understand the criteria, objective criteria that the staff for the BZA is applying to the standards in your ordinance.

McNeil: I am talking about the first amendment.

**DRAFT**

Blaikloch: Right.

McNeil: Do you have any case law or evidence to support your position?

Blaikloch: I have set forth the evidence that I have and the case law is the body of case law that stands for proposition that prior restraint on free speech must be narrowly tailored, very specific and objective. We don't believe the ordinance meets any of those standards.

McNeil: Do you have any evidence to support that this is a prior restraint case?

Blaikloch: Other than the fact that there are no criteria that establish what objective, there are no objective criteria for us to determine how the BZA or the staff is applying the standards in the ordinance.

McNeil: Says you, right?

Blaikloch: That is correct. I don't see anyone else up here saying that.

McNeil: Thank you.

Blaikloch: Thank you.

Kaczmarczyk: Thank you. Any other questions? Seeing none. Thank you very much.

Blaikloch: Thank you.

Kaczmarczyk: Sir, if you would like to step up and sign in please. Ok, you are all set. That works just fine. Alright, moving along. Is there anyone in the public who would like to speak in support of this petition? If so, come on up. Seeing none. Is there anyone in the public who would like to speak in opposition to this petition? If so, come on up. Seeing one. Take your time.

**SUPPORTERS –**

**1901-VAR-02, 1901-VAR-03, 1901-VAR-04a, 1901-VAR-04b, 1901-VAR-04c – Geft: None**

**FURTHER SUPPORTERS –**

**1901-VAR-02, 1901-VAR-03, 1901-VAR-04a, 1901-VAR-04b, 1901-VAR-04c – Geft: None**

**REMONSTRATORS –**

**1901-VAR-02, 1901-VAR-03, 1901-VAR-04a, 1901-VAR-04b, 1901-VAR-04c – Geft**

Martin: I am Richard Martin.

Kaczmarczyk: Richard, can you raise your right hand? Do you swear or affirm to tell the truth and nothing but the truth?

Martin: I do.

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Kaczmarczyk: Thank you. Please proceed.

Martin: I have given that oath several times myself. What are the cards for?

Wilson: We keep a record of It is actually a requirement of the state statute that in the event that this would lead to further litigation that we would have to notify anybody that remonstrated so they could actually participate in the lawsuit.

Martin: Having helped draft two Comprehensive Plans and two ordinances, among the one of which is in question here. As I recall, the criteria that we used is exactly the same criteria that is stated in Indiana Code. I don't believe we changed any of the wording at the time of which the ordinance was written. It was a word for word copy of the Indiana Code criteria that we were to apply by when granting a variance under the BZA rules. Any criteria that we could chose is going to be subjective if you want to take the perspective that it is subjective unless you tell me exactly where to place the dot on the "i" and where to cross the "t". It is not possible for us to write an ordinance that has criteria for every situation which is going to come before us to make a determination. It is simply not possible. However, if you go back and look at the material that was collected and submitted, both in the development of the Comprehensive Plan upon which this ordinance you are talking about is based and the ordinance itself including the minutes of discussion that were held among the various members of the Plan Commission and the Board of Commissioners, you will find there is quite a bit of evidence about the objective criteria that went into determining that the provisions provided by state law were in fact the right way for us to enact our ordinance. We did look at all kinds of things. We did do research on all of these issues. I think you can find them all documented in historical records that went into creating the ordinance provisions. The record is pretty clear on that part. Then go back to this first amendment thing since I found it very interesting. We know that for most practical broadcasting activities of an individual you need to have some kind of license. Most of those are issued by our Federal Communications Commission. Because they tend to move out over large areas. So the requirement of a permit to do a certain form of speak is not unusual in this country and has a long history of being supported. The particular thing about outdoor signage both on premise and off premise is that the intent is to cross the boundary of the property in which it is located. So, it is a broadcasting that is occurring. You will notice that in our ordinance we also stipulate something about the lighting that it could be used for various signs. Because we have illumination limits at the boundaries of properties. All of these things tend to tell me that you don't have a carte blanche to speak whatever you want to speak in whatever manner that you want to speak it to whomever you want to speak it. I think the county, state and federal government have made it very clear that there are appropriate mechanisms for the exercise of your first amendment rights and that under careful consideration that we can say how that is going to occur under certain circumstances. This being one of them. Monroe County has a 40 year history of working to minimize the amount or the number of off premise outdoor billboards in the county and we have gone probably cut them in half or maybe more after that period of time. We have not permitted any new ones for a long, long time. I have been involved in relocating a couple of them when I was a member of the Plan Commission but we have not increased the number to my recollection since probably 30 years ago or something like that. So we have a long history of keeping the visual appearance of our communities along its highways as natural as we can and I find it somewhat offensive that someone would come and tell us that they don't respect that effort that this community has gone through for so long. Thank you.

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Kaczmarczyk: Thank you, Richard. Any questions for Richard? Alright. Is there anyone else here who would like to speak in opposition to this petition? If so, come on down. Seeing none, it is back to us. I am going to say something really quickly on one thing the petitioner talked about and that had to do with discretion of the BZA. I don't remember the exact term used but it was more or less that we have unlimited discretion based on vague and subjective ordinances. Yes, we do have discretion. That is why we exist as a Board. If we didn't want a human element and we didn't want a certain level of discretion we could just plug everything into a formula and let a computer spit out a decision. But we actually have a human board with human beings to look at real life, on the ground elements of each unique situation that is different. We then apply the ordinances which I don't think are overly subjective. Through this process we make sound, logical decisions that we feel are in line with the ordinances. We also learn through this process sometimes ways the ordinances can be improved. I am not claiming they are perfect. But I think it is important to say that we have to have a Board that has discretion to analyze the facts of each unique situation and make a decision and if not there is no point in having the Board and I think that would be a terrible state to be in. So, I just wanted to put that out there. Any other thoughts, discussion, comments, etcetera?

**ADDITIONAL QUESTIONS FOR STAFF –  
1901-VAR-02, 1901-VAR-03, 1901-VAR-04a, 1901-VAR-04b, 1901-VAR-04c – Geft**

Kaczmarczyk: I have a question for you, Larry.

Wilson: Yes.

Kaczmarczyk: I was scanning through the conclusions of the findings with an eye to what you were saying about the fact that some would perhaps have to be altered, changed, etcetera. From what I could tell, other than not addressing the first amendment argument, the findings seem to be pretty solid were one to choose to deny. So, again, other than the first amendment I am not really sure what other areas you thought might need changed or perhaps you were just leaving that open.

Wilson: Based upon the letter of application, we didn't know exactly what argument was going to be brought forward which is why I at least wanted to have the option of continuing. I do want to address some of the constitutional questions. The Supreme Court has held that improving traffic safety and aesthetics, the appearance of the municipality are substantial governmental goals that are appropriate for a community to protect and as long as the ordinance serves those goals then it is an appropriate restraint on the first amendment and that case is Metro Media Inc. versus San Diego 453US490. In the recent case of Reed versus Gilbert which is the case that makes the distinction between content and there have been a lot of ordinances overturned base upon content in that ordinances that say if its commercial speech you can't do it but if its private speech you can. That is what the Reed case said, you can't make a distinction between those two. In that case specifically Justice Alito in his concurring opinion said, that had a whole list of appropriate distinctions communities could make. One of those distinctions was off premise versus on premise, set forth in the most recent Supreme Court decision on signs. Our ordinance sets forth the compelling reasons in Chapter 807 for prohibition against off premises advertising or billboards and that is maintaining and enhancing the aesthetic environment and the county's ability to attract tourism and other sources of economic development and growth. Number 4; Improving pedestrian

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traffic movement and safety, maintaining appropriate sight distances at intersections and reducing distraction and Number 5; minimizing the possible adverse effect on signs on nearby public and private property. The adverse effect of obstructing natural scenic vistas. Those are set forth in our ordinance and that is typically what courts look at as far as the basis for the appropriateness of the ordinance. I will note this is a Use Variance. We do not allow this use. It is not a conditional use. It is not a special exception. We are not obligated to set forth criteria for achieving a use that is prohibited by our ordinance. By statute there is an escape valve which is the Use Variance process, which says that if there is no other use for the property in essence that you cannot prohibit a use if that is the only use for the property. In this case there are hundreds of uses. It is zoned Commercial. It is being used right now. Clearly, enhanced revenue is not a justification for a Use Variance. They can continue to use this property for sign shop or any other use permitted by the ordinance or any other conditional use permitted by the ordinance and the BZA. Again, I think we set forth findings that are applicable for denial of the Use Variances. Again, that is up to the Board if you want to have additional findings.

Schilling: I am happy with it.

Kaczmarczyk: Ok, thank you Larry. Any further discussion or I would entertain a motion.

**FURTHER QUESTIONS FOR STAFF –**

**1901-VAR-02, 1901-VAR-03, 1901-VAR-04a, 1901-VAR-04b, 1901-VAR-04c – Geft**

McNeil: **In case number 1901-VAR-02, Use Variance Changeable Copy/Off Premise Sign Chapter 807-6, I move that we deny the request for a Use Variance based upon the findings of fact.**

Kruzan: **Second.**

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

Wilson: Ok. Is this for both Use Variances?

McNeil: **Both the Changeable Copy and the Off Premise.**

Wilson: Ok, they have the same findings. The vote is on petition 1901-VAR-02, Use Variances for Changeable Copy and Off Premise Sign pursuant to Chapter 807-6 (B) (2) & (5), Geft Outdoor LLC. A vote in favor is a vote to deny the Use Variances. Bernie Guerrettaz?

Guerrettaz: Yes.

Wilson: Peter Kaczmarczyk?

Kaczmarczyk: Yes.

Wilson: Mark Kruzan?

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Kruzan: Yes.

Wilson: Michael McNeil?

McNeil: Yes.

Wilson: The variances are denied by 4 to 0 vote.

Kaczmarczyk: Thank you Larry. Good luck to you. I assume therefore that **we do not need to hear cases 1901-VAR-03, 1901-VAR-04, A, B and C.** Correct?

Wilson: **Those cases are now mute.**

Kaczmarczyk: I just wanted that on the record.

**The motion in cases 1901-VAR-02 - Geft Outdoor LLC Changeable Copy / Off Premise Sign Use Variance Chapter 807-6 (B)(2) & (5), 1901-VAR-03 - Geft Outdoor LLC Sign Area Variance to Chapter 807-6 (D)(2) & (3), 1901-VAR-04a - Geft Outdoor LLC Sign Height Variance to Chapter 807-6 (F)(1), 1901-VAR-04b - Geft Outdoor LLC Sign Side/Rear Yard Setback Variance to Chapter 807-6 (F)(2), 1901-VAR-04c - Geft Outdoor LLC Sign Front Yard Setback Variance to Chapter 807-6 (F)(3), in favor of *denying* the variances, carried unanimously (4-0).**

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**NEW BUSINESS**

**7. 1902-VAR-05**

**G. Tarter Buildable Area Variance to Chapter 804.**

One (1) 5.0 +/- acre parcel in Van Buren Township, Section 17 at 3150 S Hoff LN. **Zoned AG/RR.**

**BOARD ACTION:** Kaczmarczyk introduced the petition.

**STAFF ACTION:**

Nester: This case is a Buildable Area Variance to Chapter 804. It is one 5 acre parcel located in Van Buren Township, Section 17. It is located at 3150 S. Hoff Lane and its zoning is Agricultural/Rural Reserve. The Comprehensive Plan has this as Rural Residential and the site conditions here. It is a fairly large site. There is some slope to it. Here is the zoned in site map showing the area of the house and the petitioner is asking to put in an inground pool north of the home and the driveway. This slope map is based on data from 2010 approximately. So the contours are a little bit dated for this site in particular. I have some site photos here. This petition case came in as a Building Permit application for an inground pool. Upon review from our Zoning Inspector, she noted that the petitioner had put in a fairly large retaining wall and that they had changed the contours for the ground approximately in 2013. Because our slope maps and our best available data show this area is sloped, we looked into and realize that the petitioner was not aware that they needed a Grading Permit prior to doing the retaining wall work, which disturbed approximately 0.81 acres of area. I have met with the petitioner and they have said that they have done this work to help improve the drainage here and so what we are doing instead of doing a survey and showing after-the-fact contours here, is we are asking for a Slope Variance to put in a pool right in between the end of the driveway and the retaining wall. Here is a bird's eye view of the property. So, it would be kind of on the north side right before the first retaining wall. The petitioner letter has also requested the Buildable Area Variance for the purposes of putting in the pool and then the site plan as well showing that they have plenty of area away from the property lines to put in the pool as well as the location that they are asking for. They have asked for I believe a 4' foot deep pool. Here is the specs, so it's about 36' feet long and 16' feet wide. I wanted to note that this is the bird's eye view from 2017 and then here is a view of the property from 2012 before the renovations and the current owner took on the property and did quite a bit of work to the home and the area. That is kind of what the area looked like prior to the terracing and the retaining wall. Staff's recommendation is to deny the variance for Buildable Area based on findings of fact and I will take any questions that you have.

**RECOMMENDED MOTIONS**

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

**FINDINGS OF FACT: Buildable Area (15% Slope)**

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

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

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

**Findings:**

- Approval of the variance would allow the petitioner to disturb 1560 sq feet of area in the previously non-buildable area, including a 16' x 36' in ground pool and 984 sq foot concrete patio surrounding the pool;
- The petitioner did grade the area where the pool is proposed to add in retaining walls between 2012 and 2014 without grading permits. The area of disturbance included about 0.18 acres;
- The proposed area for the pool does not contain other structures or trees;
- The petitioner's site is not within the Environmental Constraints Overlay;
- The site does not appear to contain sinkhole conservancy areas;
- Conclusion: It would not impair the stability of a natural or scenic area.

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

**Findings:**

- The petitioner has existing access off of S Hoff Lane;
- The septic system will not conflict with the proposed pool location;
- The proposed project would not create additional traffic or impact existing utilities in the area;
- Conclusion: It would not interfere with or make more dangerous, difficult, or costly, the use, installation, or maintenance of existing or planned transportation and utility facilities;

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

**Findings:**

- See Findings under Section A(1) and A(2);
- Conclusion: The character of the property included in the variance would not be altered in a manner that substantially departs from the characteristics sought to be achieved and maintained within the relevant zoning district;

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

**Findings:**

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

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

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

**Findings:**

- See Findings under Section A(1);
- The proposed location of the pool is flat due to the grading that occurred without a permit;
- The proposed pool location meets all other design standards;
- Conclusion: Approval of the variance would satisfy the design standard sought to be varied.

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

**Findings:**

- See Findings under Section A(1);
- Drainage on the property runs south;
- Conclusion: It would not promote conditions detrimental to the use and enjoyment of other properties in the area.

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

**Findings:**

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

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

**Findings:**

- Staff has determined the Buildable Area 15 percent slope variance is necessary to construct the proposed pool and deck on the petition site since the grading work was conducted prior and without appropriate permits;
- Staff finds that there is no practical difficulty in the use of the property. The configuration of the lot and existing slopes could have allowed for the petitioner to construct the pool in a different location.

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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 – 1902-VAR-05 – Tarter**

McNeil: Do you believe that they knew that they should have gotten some permission to do the terracing to the home?

Nester: No, at the time that they were doing the remodel to the home they did receive applicable Building Permits. With every Building Permit that we get we do check all the history of all the buildings on the land. There was one other small carport issue, addition that we have already resolved with the owner with this permit application. But all other permits were applied for and the Building Department does not inspect retaining walls, so I have feeling that when they were doing this work at the same time that they likely called the Building Department and they said they didn't need a permit and then they proceeded with the work. It is a point that we find people often confused by which is we require a Grading Permit even if there isn't a Building Permit required.

McNeil: Do you know at all whether the plan for the pool proceeded the grading or did the idea of the pool occur after the grading?

Nester: Given that the work was done in 2013 and the pool was applied for in 2019, I guess that is a good question for the petitioner but it's been several years.

McNeil: Thank you.

Kaczmarczyk: Any other questions for staff? Alright in that case, no, go for it.

Guerrettaz: Did you say that staff saw an alternate location for the pool to be located?

Nester: So, this parcel is fairly large and when we are looking at Buildable Area, technically there is area in the front yard that is flat for a pool. But I think the petitioner would also like to speak to the drainage as it flows now with these contours changed. There is area but the septic is on south side of the driveway. If that helps.

Guerrettaz: That is what I was asking specifically where you were thinking because I knew they had a septic over there.

Kaczmarczyk: Anything else for staff? In that case, would the petitioner or the petitioner's representative like to address the Board? Come on up.

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**PETITIONER/PETITIONER'S REPRESENTATIVE – 1902-VAR-05 – Tarter**

Kaczmarczyk: Sir, can you raise your right hand and state your name?

Tarter: Gary Tarter.

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

Tarter: I do.

Kaczmarczyk: Thank you. Please proceed.

Tarter: I would like to read a brief statement, please. I purchased the property in February of 2013. In March of 2013 I applied for and received a Remodel Permit from the Monroe County Building Department. After I began the remodel on the house, I noticed water was flooding the finished basement when it rained. The water was coming into the crawlspace from the west side of the house flowing through the crawlspace and into the finished basement and exiting the basement through the front of the house, the front door facing east. I suspended work on the remodel to correct and prevent the water infiltration to the house. This was no small amount of water into the house. There was substantial mold. The walls and plates were deteriorating. The floor covering into the basement was warped and buckling. I built a 2-tier retaining wall with the largest interlocking blocks I could manually lift without the assistance for the machine. The blocks weighed approximately 80 pounds each. I filled every row of the blocks with gravel, placed drain tile behind both walls and backfilled both walls with gravel. After completing the retaining wall, I moved back to the remodel finishing in October 2013 and moving in November 2013. Currently I own and operate a food truck in Monroe County within the city limits of Bloomington. I apply yearly and receive the necessary permits from the city and the Monroe County Health Department. I am in good standing with the city and I am a preferred vendor with Indiana University. Prior to this I owned and operated a property management firm in the City of Bloomington for over 15 years. We managed in excess of over one hundred houses and apartments. I worked closely with City Planning along with Housing and Neighborhood Development on many projects and inspections. I applied for and received permits as necessary along with any variances for housing. In both of my businesses I worked with governmental agencies and my philosophy has always been to retain a good rapport with any agency I was working with. When I applied for the pool permit I was trying to follow proper procedure in applying for the permits as necessary, just as I have always tried to do. I was not trying to circumvent or get around having a permit when I built my retaining wall, I was just simply unaware a permit was needed to build this wall. I received a letter from the Planning Commission dated January 24, 2019 stating I was not in compliance due to grading without a proper permit. Immediately I contacted the Planning Department and tried to rectify this situation. I met with Jackie Nester the same week to find out what I needed to do. I was notified that I needed to apply for a Buildable Area Variance and did so immediately. All staff conclusions on my variance request seem to be in support with the exception of the final one which is the building of the retaining wall, ground disturbance without a permit. I can assure you the wall was built correctly. It has not moved in the 6 years that it was built and it works as it was intended, keeping the water from getting into my house. The ground where the proposed pool would be located is now completely flat and it has no drainage issues. We have a finished basement in the

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house. We have no water issues. The pool builder that I consulted has been building pools in Monroe County for over 25 years. The water still drains to the same location as it did before I built the retaining wall only now it does not flow through the house. The retaining wall needed to be built to correct the water flow. The way the water previously flowed made it nearly impossible to have a livable structure at this location. Had the retaining wall been built or some other drainage measurers taken prior to purchasing this property, the previous home would not be in such bad shape. I built a retaining wall to control the water through my house and mistakenly did it without a proper permit. For that, I apologize. I have put a lot of my resources into improving what was a dilapidated, bank owned, foreclosed property and made it into a safe, secure home that my family and I are very proud of. We are happy in our home and we ask for your approval on this variance.

Kaczmarczyk: Thank you, sir. Any questions for Mr. Tarter?

McNeil: I have a question. Can you direct my attention to which of the findings you say does not support?

Tarter: It was a little vague.

McNeil: Or maybe staff could help in that regard.

Tarter: It is the final finding. It says staff has determined that the Buildable Area 15 percent Slope Variance is necessary to construct the proposed pool and deck on the petition site since the grading work was conducted prior and without appropriate permits. Staff finds there is no practical difficulty in use of the property. The configuration of the lot and existing slopes could have allowed for the petitioner to construct the pool in a different location. That is the only negative, somewhat negative conclusion on the report that I have found.

McNeil: Staff, is that true?

Nester: Yes, just the hardship piece.

Kaczmarczyk: Any other questions for the petitioner?

Guerrettaz: The hardship began several years ago when the water was flooding through your house and you had to take corrective action to remedy that, is that correct?

Tarter: Yeah, when I started to remodel the house and noticed the water was coming through I had to stop. There was no since in remodeling when the water is coming through, yes.

Guerrettaz: Because that slopes comes down this way toward the back of the house, terracing it slows the water down and actually created a flat area behind the house, which enabled the location for the pool. I am not trying to get too simplistic here but I am trying to look at the steps that went into this.

Tarter: Yeah, the pool wasn't, my wife and I adopted a couple of kids a couple of years ago and this came on the books probably a year ago that we started thinking about a pool. So, the pool

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wasn't on the books when we built this property. My wife and I lived there by ourselves and again, we increased our household and decided, hey maybe we could put a pool in. So, it had no, we flattened it out just because that is what we did when we built the wall. We have a nice fire pit there and we just kind of hang out there.

Kaczmarczyk: Well, the question I am going to ask staff but you might be able to help. Because you might know better. Do we know approximately how many square feet of area a slope was disturbed at the time of the terracing? I know you said you had old pictures that you looked at.

Nester: Just by the rough estimate that we did on the GIS it was like 0.18 acres or so...

Kaczmarczyk: I think you did say that.

Nester: Of the area that has been terraced, yeah, that was previously I think of steepest slope. But I will note that this isn't in the Environmental Constraints Overlay Area, we technically under Buildable Area don't have a prohibition against grading in the steep slopes area in the 15 percent county wide. If we would have gotten a Grading Permit it wouldn't have been a prohibited act to grade this site.

Kaczmarczyk: So if a permit application had come in at the time it wouldn't even have gotten to the BZA, it would have been approved administratively, is that what you are saying?

Nester: Well, that and the Buildable Area Variance requirement came into effect in 2015 and this would have been 2013.

Kaczmarczyk: Ok, I think I have got it. Thank you.

Guerrettaz: If that work would have been done, completed there would have been a relatively flat or level area behind the house upon which they would have placed the pool.

Nester: Yes, that we would have information about based on, yeah.

Guerrettaz: So, then the pool would probably be permitted.

Nester: Correct.

Kaczmarczyk: Thank you. Any other questions for the petitioner? Thank you, Mr. Tarter. Is there anyone here in the public who would like to speak in support of this petition? Seeing none. Anyone here who would like to speak in opposition to this petition? Seeing none. I will entertain a motion, discussion, etcetera.

**SUPPORTERS – 1902-VAR-05 – Tarter: None**

**FURTHER SUPPORTERS – 1902-VAR-05 – Tarter: None**

**REMONSTRATORS – 1902-VAR-05 – Tarter: None**

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**ADDITIONAL QUESTIONS FOR STAFF – 1902-VAR-05 – Tarter: None**

**FURTHER QUESTIONS FOR STAFF - 1902-VAR-05 – Tarter**

McNeil: I have a motion. **In case number 1902-VAR-05, Design Standards Variance Chapter 804, I move that we approve the variance, based upon the findings of fact, amended in the last two paragraphs where it states, “necessary” change that to “not necessary” and in the paragraph after that where it states, “no practical difficult” strike the word “no”.**

Kruzan: **Second.**

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

Wilson: The vote is on petition 1902-VAR-05, Tarter Buildable Area Variance. A vote in favor is a vote to approve the variance, based upon the findings as amended. Peter Kaczmarczyk?

Kaczmarczyk: I will say very quickly, I am known to not be a fan of its easier to ask for forgiveness later than ask permission but I don't think that was the case in this situation. So, I will vote yes.

Wilson: Michael McNeil?

McNeil: Yes.

Wilson: Mark Kruzan?

Kruzan: Yes.

Wilson: Bernie Guerrettaz?

Guerrettaz: Yes.

Wilson: The vote is 4 to 0 to approve the variance based upon the amended findings.

**The motion in case 1902-VAR-05, G. Tarter Buildable Area Variance to Chapter 804, in favor of approving the variance, with the findings as amended, carried unanimously (4-0).**

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**NEW BUSINESS**

**8. 1902-VAR-06**

**LaPlante Conditions for a Tourist Home Variance to Chapter 802**

**9. 1902-VAR-07**

**LaPlante Minimum Lot Size Variance to Chapter 804**

One (1) 1.99 +/- acre parcel in Benton South Township, Section 35 at  
1592 N Sewell RD. **Zoned FR.**

**\*\*\*CONTINUED BY PETITIONER\*\*\***

**BOARD ACTION:** Kaczmarczyk introduced the petition.

**STAFF ACTION:** Petition has been continued by the petitioner.

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**NEW BUSINESS**

**10. 1902-VAR-08 Shivam Investments LLC Changeable Copy Sign Variance to Chapter 807**

One (1) 1.81 +/- acre parcel in Richland Township, Section 31 at 9817 W State Road 43. **Zoned PB.**

**BOARD ACTION:** Kaczmarczyk introduced the petition.

**STAFF ACTION:**

Nester: This is a Changeable Copy Sign Variance. Not a Use Variance but a Design Standards Variance. It is a one 1.81 acre parcel in Richland Township, the very west part of the county. This very recently went through a rezoning by the Plan Commission to be Pre-Existing Business. It used to be Agricultural/Rural Reserve. But it was rezoned last year. The Comprehensive Plan has this area as Farm and Forest. The site conditions show that it is partially part of the floodplain. The petitioner would like to place a changeable copy or a digital sign is going to be on a new canopy. This canopy will be located outside of the front setback and they have submitted a full landscaping plan as part of their site plan requirement, as well as a photometric plan showing that they meeting all of the lighting requirements. They will still be subjected to all of the requirements on 807 including illumination and other setbacks and total square footage of permitted signage. This is a bird's eye view of the property showing the rural character. It does have two creeks kind of going through it. The area where the sign would be would be on the canopy which is located closely to the 43 turn there. The petitioner letter requesting for the sign on the canopy and then I have the site plan here and what they are asking for is approximately 40' square feet of digital signage on the property. They would have two diesel signs and two regular gas signs. One would be facing the east and the other would be facing the north. Since digital signage or changeable copy signage is not permitted in the county this is at least in an area that meets all setbacks, that is part of a new site plan for a new site that is being expanded and approved and they are meeting all landscaping which should help with the buffering. The recommended motion by staff is to approve the Design Standards Variance for Changeable Copy based on findings of fact.

**RECOMMENDED MOTION:**

Staff recommends **approval** of Design Standards Variance 1902-VAR-10 to allow changeable copy (digital) signage as a result of the findings of fact and subject to the following condition:

1. All temporary and off-premise signage along the eastern property line be removed.

**FINDINGS OF FACT – SIGN REQUIREMENTS (Changeable Copy)**

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

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

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

**Findings:**

- The ordinance presumes that the Prohibited Signs standard serves to protect public health, safety, morals, and general welfare;
- Chapter 807-6, General Sign Requirements, (B) Prohibited Signs, (2) states that “All animated or changeable copy signs (including digital billboards), or signs which move by mechanical means or by the movement of air are prohibited.”
- The adjoining property immediately surrounding the site is principally agricultural and residential;
- The sign location outside of the right of way does not negatively impact site triangles for drives or site distance;
- Sign would be lit by LED components (Exhibit 2);
- 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:**

- The sign will be located outside of the right of way;
- The proposed signs will be limited to the proposed location and size per this request. Any future expansion to any approved changeable copy (digital) signs would be required to get BZA approval;
- All other design standards for the proposed sign would be met such as height and location or a design standard variance will be obtained;
- The height of the signs will be 18’ from the ground. The dimensions of the four proposed signs – two regular gas price signs and two diesel gas signs – would be approximately 2’ by 5’ (10 square feet per sign \* 4 signs = 40 square feet total);
- The location of the pricing signs on the canopy is preferred by INDOT;
- The petitioner is permitted to have 600 square feet of signage per Chapter 807;
- 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:**

- The allowance of a changeable copy sign for a fuel station is consistent with all other fuel stations in the area;
- There is not another gas station in this vicinity for approximately 10 miles;
- The height of the sign is 18 feet from the ground. The maximum sign height is typically 25 feet for free standing signs;
- The petitioner is requesting four changeable copy (digital) signs, which are strictly

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prohibited by the ordinance;

- This property was rezoned to Pre-Existing Business (PB) in 2018, which allows the petitioner to have 600 square feet of signage;
- 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 ordinance presumes that the Prohibited Signs standard serves to protect public health, safety, morals, and general welfare;
- Sign price will be changed via remote control and eliminate the need for a person to manually change the sign in various types of weather and traffic conditions;
- 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:**

- The proposed changeable copy sign would be used to communicate to the driving community the price of fuel at that particular fuel station in a safe and timely manner;
- The changeable copy (digital) sign cannot change more than eight times per day according to the Monroe County Zoning ordinance;
- The sign location meets all other sign regulations;
- Adjoining properties are residential and agricultural in nature;
- 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:**

- A changeable copy sign should not have any significant environmental impacts;
- The LED sign would be conforming to the illuminated sign requirements:  
***807-6(A) Illumination: Illuminated signs are permitted, subject to the following:***

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*1) The source of illumination for externally illuminated signs shall be located at the top of the sign and directed downward toward the sign face and must be shielded from view of oncoming traffic;*

*2) The source of illumination for internally illuminated signs must be completely enclosed within a translucent sign unit, or, if attached to the sign face as a design element, may be provided only by translucent tubes, tubing, bulbs or fixtures.*

*3) Illuminated signs may not produce heat or glare in such a manner as to constitute a nuisance (e.g., shining into a residential building) or a traffic hazard (interfering with a driver's vision); and,*

*4) The source of illumination may not flash, shine intermittently, or be used to create a strobe effect.*

- The petitioner's representative has submitted a photometric plan showing they meet the performance standards in Chapter 802-4(F) for heat and glare:

**(F) Heat and Glare.** No use shall produce heat or glare in such manner as to create a nuisance perceptible from any point beyond the lot lines of the property on which the use is conducted. In nonresidential areas, any lighting used to illuminate an off-street parking area, loading area, driveway, or service drive shall be shielded with appropriate light fixtures directing the light down and away from adjacent properties in order that the illumination at any property line shall not exceed one (1) foot candle. All exterior lighting shall be hooded and shielded so that the light source (i.e. bulb, filament, etc.) is not directly visible from the residential property lines. In residential areas, exterior lighting at any property line shall not exceed one (1) foot candle.

- The petitioner submitted a site plan that complies with all streetscape and bufferyard requirements, which will help screen the use from neighboring properties;
- Conclusion: It would not promote conditions detrimental to the use and enjoyment of other properties in the area;

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

**Findings:**

- Property value tends to be subjective as it is difficult to anticipate adverse effects.
- Subject to concerns brought up during the hearing;

**(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 property has not had a changeable copy (digital) signs before and therefore a variance would grant the petitioner four changeable copy (digital) signs equal to approximately 40 square feet;
- There does appear to be practical difficulties in the use of the property as there is currently no changeable copy (digital) signs on the property, which is needed to advertise changing gasoline prices.

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**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 – 1902-VAR-08 – Shivam**

Kaczmarczyk: Thank you Jackie. Any questions for staff? Seeing none. Is the petitioner or the petitioner's representative here and would they like to speak? Come on up and sign in.

**PETITIONER/PETITIONER'S REPRESENTATIVE – 1902-VAR-08 – Shivam**

Kaczmarczyk: Can you raise your right hand and state your name?

Knoke: Kendall Knoke.

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

Knoke: I do.

Kaczmarczyk: Thank you, please proceed.

Knoke: My name is Kendall Knoke with Smith Brehob and Associates. I am representing Ravi Pal, the petitioner. I think it is pretty straight forward but we are here if you do have any questions, anything that needs to be clarified. We are just requesting to post the unleaded and the diesel gas prices in two directions so it's a total of four signs as Jackie said. It looks like the precedent in the county is that this has been allowed. I couldn't find a gas station in the county that didn't have either digital or the older fashion changeable copy sign. That is why we went ahead with it. It looked like it was something that is normally approved but if you have any questions, I am happy to answer them.

Kaczmarczyk: Thank you. Any questions of the petitioner? Looks like you are good. Thank you. Is there anyone here who would like to speak in support of this petition? Which way are you turning, Richard? You are coming this way. Alright, you are still sworn in.

**SUPPORTERS – 1902-VAR-08 – Shivam**

Martin: This is one of those cases where we have historically acknowledged the change in technology that makes the changing in prices in automatic technology activity now. What we have done in the past as I recall is to limit the usage of these digital signs to the posting if prices for gasoline. So they don't end up with eh ribbon across the bottom that is giving some other type of

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advertising message. I think that has happened before in the county and I would ask that you make sure that what is posted is what they came here to tell you about which is gasoline and diesel prices and not other advertisement. Thank you.

Kaczmarczyk: Thank you. I will say that I have heard enough of these cases that is pretty much correct. Is there anyone else in the public who would like to speak in support of this petition? Anyone out there who would like to speak in opposition to this petition? Seeing none. I will say Richard is absolutely right. We have heard a number of these cases over the years and we have always made clear that while we have approved them it has been for gas prices specifically. Because that is what the petitioners have come for. We have spelled that out clearly. Any more discussion, motion, etcetera?

Schilling: We do have a provision in our sign ordinance that says people can substitute noncommercial speech for commercial speak and vice versa and this is as a result of the Gilbert case. This may be the first, I don't know, changeable copy variance we have done since then so limiting what is said on them might be problematic.

Wilson: One thing we can do is limit the number of times the message changes. That would avoid video or movable copy.

Schilling: I think we have done that in the past.

Kaczmarczyk: Yes we have.

Wilson: I think often we limit it to like 8 times a day that is a typical standard that we use. That way if gas prices are going crazy they can make changes but it's not a case where they can have movable copy scrolling all the time.

Kaczmarczyk: I thought I saw that spelled out somewhere in the packet. I am not sure where it is now.

Nester: Yes if it changes 8 times or more per day it is an animated sign which is different than changeable copy in our ordinance. It is limited by the nature of its sign.

Guerrettaz: Is that definition in the ordinance?

Nester: Yes.

Kaczmarczyk: Any other questions or motions, etcetera?

Guerrettaz: Does the petitioner understand what is being said up here, the limitations?

Kaczmarczyk: Petitioner nods yes.

Knoke: Yes, we do and the price typically just changes at 6 am every day. So usually its once a day.

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Guerrettaz: That's good.

Kaczmarczyk: Any other questions or a motion?

**FURTHER SUPPORTERS – 1902-VAR-08 – Shivam: None**

**REMONSTRATORS – 1902-VAR-08 – Shivam: None**

**ADDITIONAL QUESTIONS FOR STAFF – 1902-VAR-08 – Shivam: None**

**FURTHER QUESTIONS FOR STAFF - 1902-VAR-08 – Shivam**

McNeil: I have a motion. **In case 1902-VAR-08, Design Standards Variance Chapter 807 Signs Changeable Copy, I move that we approve the variance based upon the findings of fact and subject to the condition that;**

- 1) All temporary and off premises signage along the eastern property line be removed.**

Kaczmarczyk: I will **second** the motion. Larry, if you could call the roll.

Wilson: The vote is on petitioner 1902-VAR-08 Shivam Changeable Copy. The motion is to approve based upon the findings with the review conditions set forth in the staff report. Again, a vote in favor is a vote to grant the variance. Michael McNeil?

McNeil: Yes.

Wilson: Mark Kruzan?

Kruzan: Yes.

Wilson: Bernie Guerrettaz?

Guerrettaz: I would like to say first that this petition came up at the Plan Commission and it's nice to see a property like this get brought to a standard that is good for the area. So, it's a yes vote for me.

Wilson: Peter Kaczmarczyk?

Kaczmarczyk: Yes.

Wilson: The variance is granted 4 to 0.

**The motion in case 1902-VAR-08, Shivam Investments LLC Changeable Copy Sign Variance to Chapter 807, in favor of approving the variance with the conditions set forth in the staff report, carried unanimously (4-0).**

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**NEW BUSINESS**

**11. 1902-VAR-09 Bean Blossom Ridge LLC ECO Area 3 18% Slope Variance to Chapter 825**

One (1) 176.5 +/- acre parcel in Benton South Township, Section 28 & 29 at 1800+/- N Gettys Creek RD. **Zoned AG/RR/ECO3.**

**BOARD ACTION:** Kaczmarczyk introduced the petition.

**STAFF ACTION:**

Behrman: This property is 176 acre lot of record. It is 3 parcels but was determined after reviewing the deed by staff that its 1 lot of record. It is located in Benton South Township and it is in like the 1800 block of North Gettys Creek Road. It is currently zoned Agricultural/Rural Reserve and is within the Environmental Constraints Overlay Area 3, which restricts 18 percent slopes due to the sensitivity of the Lake Monroe Watershed. The Comprehensive Plan has it as Farm and Forest and you will note some of the darker green spots on that map there are Managed Lands, I believe its State Forest adjacent. This is the conditions of the property. North Gettys Creek Road bisects the property and I believe its Stephens Creek is the creek that also runs parallel kind of to the road and bisects it. It is not technically FEMA Floodplain through there. But DNR has done studies and has determined the 1 percent chance flood level. There are plenty of steep slopes. A lot of them are forested. There are a couple of different farming practices up on the steeper slopes it looks like they harvest it looks like pasture of hay and then down below its row crops. There is currently just one structure on the property. It looks like an old silo. This is a picture of the slopes that we have from lidar data. These pictures here just kind of give you the variety of the site over the 176 acres you get the row crops, the upper bluff type areas and then the creek. When you get to this set of pictures, the upper right photo is a driveway that was denied by Highway Department and was more requested to move 54' feet over which is the area at the bottom, the bottom photo. These are a few other photos of the proposed driveway that is being requested. This is an aerial view of the site and I have two different orange areas that show these existing driveway cuts that have historically been used for, I think there was an old homestead there but then also for farming practices and for logging as well. The issue that we have here is I am going to get over to the plat here. A plat was submitted last year to subdivide this one lot into four lots of record. Lots 3 and 4 that go to the south we saw no issues with but Lots 1 and 2 to the north, once we read the comments from the Monroe County Public Works regarding the driveway it became evident that a significant amount soil disturbance was going to have to occur on slopes greater than 18 percent. Thus not meeting our ordinance requirements to allow for a plat to continue in this format. They could reconfigure the lot so that all four lots are to the south and then maybe just have an access. There are different ways to redo it but I think the petitioner would like to carry forward with the lot configuration in this plat. The issue that we are working on here is the two driveways to the north. This depicts Lot 1 and there is kind of an orange driveway that was not permitted. The Highway Department decided that it did not have the visibility requirements met. They required that a brand new driveway be cut 54' feet to the east and then in order to obtain that 300' foot sight distance that is required on either side of the driveway there would have to be some earth removal. There is an engineer drawing. I do have a large copy her if anyone would like to see that Deckard Land Surveying produced showing the topography and slope and maybe how much would need to be removed to acquire this new driveway to allow Lot 1 to be created in the platting process. Lot 2 is this one. The existing location worked for the Department of Public Works, the Highway

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Department but they did not see appropriate sight distance so they are requiring the slope to be cut back, and again that disturbs the 18 percent slopes. These are the safest two locations for Lot 1 and Lot 2 as deemed by the Department of Public Works. But there is no way to not access this site safety without disturbing some sort of slope. So, then you get back to well, then just reconfigure the lots so all 4 building lots are to the south with safe access that doesn't have to disturb steep slopes. We brought this petition here to see where the BZA stood if we should basically have no driveways to the north or maybe permit just one driveway, the one that may seem to cause the least amount of disturbance. That would still allow the petitioner to have a shared driveway and create the two lots to the north but just with one access point or you could go with the two driveways as they proposed in their original plat. Just a couple more things. Here is kind of a blown up drawing of Lots 1 and 2 and some of the conditions there. This is the engineered drawing. That was produced by Deckard Land Surveying. We have had a petition, a plat before with the same issue, not having that line of sight distance. It was not in that ECO Area and so in order to obtain the final plat and be able to be recorded, they had to shave back the hillside. This is on North Brummetts Creek Road, no I am sorry, this is Boltinghouse Road. On Boltinghouse Road they were able to just come through and carve it out to create that site distance but did not require a variance because it was not in the Environmental Constraints Overlay for Lake Monroe. Staff thought it made sense to have at least one safe entrance to the northern part of the property. Whether they decide to put structures there are develop it or not there is agricultural and logging that does happen there and we also thought it made more sense to have the proposed Lot 1, I am going to read it actually, staff recommends approval for the Preliminary Plat based on the findings of fact subject to the Department of Works, I think I cut and paste that a little odd. Staff recommends approval for Slope Variance request for ECO Area 1 Slope Disturbance. I have to make a correction in this slide. Based on the findings of fact and subject to the Department of Public Works Engineering reports and with the following condition; the proposed Lot 2 access should not be used as it appears Lot 1 access would be less disturbance and a shared driveway for proposed Lot 1 and 2 in this case. Does anyone have any questions?

## RECOMMENDATION

Staff recommends **approval** for the ECO Area 3 Slope Disturbance based on the Findings of Fact subject to the Department of Public Works engineer reports with the following one condition:

- The proposed Lot 2 access should not be used as it appears Lot 1 access would be less disturbance and a shared driveway could be utilized to access the proposed Lot 1.

## FINDINGS OF FACT: ECO Area 3 Regulations

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 earth disturbance on slopes greater than 18 percent to allow safe access to the northern portion of the petition site;
- The petition site is 176+ acres with a proposed subdivision to create four lots with the following acreage: Lot 1=22.44 acres, Lot 2=55.95 acres, Lot 3=41.16 acres, Lot 4=53.20 acres
- The permitted driveway access is necessary to allow for a proposed Lots 1 & 2 to be created for the purpose of residential development;
- The property is in the Environmental Constraints Overlay Area 3 (ECO Area 3);
- The property to the east is a part of Morgan Monroe State Forest managed by DNR;
- The surrounding area is forest, farmland or residential;
- The site has no FEMA floodplain on the lot but DNR has delineated the 1% chance floodplain for Stephens Creek (Exhibit 1);
- 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);
- Access to the property is derived from N Gettys Creek RD, a designated Minor Collector vested with a with a proposed 60-foot right-of-way;
- The northern part of the petition site has two unpermitted access points for agriculture access;
- No further development of the northern part of the property could proceed without a valid driveway permit;
- In the proposed driveway configuration one driveway requires 600' of sight distance (300' each way) and utilizing both would require 900' of sight distance due to overlap (300' each way);
- Driveway permits are issued for the safest access location on a property;
- Allowing one permitted driveway access point would benefit the property overall in terms of safety;
- Gettys Creek RD is a low priority greenway opportunity in the Monroe County Transportation Alternatives 2018 Plan;
- 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), (2);
- The petition site is zoned Agriculture / Rural Reserve (AG/RR) which requires a minimum lot size of 2.5 acres;
- The Comprehensive Plan lists this as Farm and Forest:
- The Comp Plan supports sparsely populated areas and offers very low density residential opportunities because of both adjoining Vulnerable Lands and the lack of infrastructure necessary for additional residential density;
- 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 A;
- The allowance for 18 percent slope disturbance for the purposes of a driveway installation to provide safe access to the north would benefit public safety regardless of if

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there was a petition for a subdivision or not;

- Allowing two ingress / egress access points to the north would increase the amount of disturbance;
- The proposed Lots 1 and 2 could utilize a shared driveway to access both lots;
- There are slopes less than 18 percent that connect proposed Lots 1 and 2;
- Conclusion: The specific purposes of the design standard sought to be varied would be satisfied;

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

**Findings:**

- See Findings under Section A(1), A(2), B(1);
- Drainage from the site flows to the perennial stream, Stephens Creek, which bisects the petitions site;
- Stephens Creek flows into Lake Monroe;
- Conclusion: It would not promote conditions detrimental to the use and enjoyment of other properties in the area.

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

**Findings:**

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

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

**Findings:**

- See Findings under Section A(1);
- If the variance is not granted the proposed subdivision would have to be reconfigured and the property north of N Gettys Creek Road would utilize existing driveways for agriculture use access only;

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- Approval of the variance would only apply to the pre-existing non-conforming structure;
- Conclusion: One variance is needed to address the ECO Area 3 (18% slope) requirements to approve safe ingress/egress access to the northern portion of the petition site;

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

**NOTE:** The Board must establish favorable findings for **ALL THREE** variances in order to legally approve the proposed development as submitted in the petitioner's site plan.

### QUESTIONS FOR STAFF – 1902-VAR-09 – Bean Blossom

McNeil: I am not sure what we are being asked, whether we are being asked to allow a driveway or we are being asked to, I can't tell from your recommended motion.

Behrman: My recommended motion should read that staff would support a variance to Slope Disturbance in ECO Area 3 with the condition that is stated there; that the slope disturbance should be limited basically for the Lot 1 access point. That is where they have to move it 54' feet to the east, it seems like there is less slope disturbance that would occur on that location rather than on the Lot 2 location.

McNeil: Where is the petitioner requesting to slope disturbance for the new driveway?

Behrman: Can you repeat the first part?

McNeil: Is the petitioner requesting a variance to construct a new driveway?

Behrman: yes, in order to create new lots here on the north side of the property.

McNeil: Do you treat slope disturbance for purposes of access like a driveway different from slope disturbances for building a building?

Behrman: In the ECO Chapter any slope disturbance and vegetation removal is prohibited on the restricted slopes whether it's the 12, 15 or 18 depending on what zone you are in. We have had driveways come here before so that people could access other parts of their property that are buildable area. In the past we have had driveways sometimes they have been longer, these happen to be fairly short areas that would have to be cut compared to some of the other ones that we have seen where it's a longer disturbance that has to be done on a property through ECO. In Chapter 804 we are slope restricted but it is specifically the structures. You can cut a driveway up a straight up hill following Best Management Practices and not need a variance, so long as your structures that are going to go on slopes meet regulations.

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McNeil: So access variances to reach a flat buildable site have generally been favored?

Behrman: Yes, it protects our watershed. Because we do have a lot of sites in the Lake Monroe Watershed that developers have not been able to develop. One of these was the peninsula that goes out into Lake Monroe right there next to the cosway that now is owned by the Sycamore Land Trust. That was one that I don't even believe they came here for a variance. Did they come here for a variance?

Wilson: I don't think so.

Behrman: I think we were able to detour that development within our office by staff. But that was on parcel that though there was a little bit of flat area way out there on that peninsula the area of disturbance to create the driveway to get there restricted that use on that part of the property and they would have had to build their house right up next to the road, area of less disturbance.

Kaczmarczyk: Any other questions of staff? In that case, we will move onto the petitioner. Would the petitioner or the petitioner's representative like to address the Board? Come on up.

**PETITIONER/PETITIONER'S REPRESENTATIVE – 1902-VAR-09 – Bean Blossom**

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

Deckard: Eric Deckard.

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

Deckard: I do.

Kaczmarczyk: Alright, please proceed.

Deckard: I am Eric Deckard. I here representing the petitioner from Beam Blossom Ridge, LLC today. We are requesting two driveways to able to be placed on existing driveways that have been in use for plus or minus 75 years or at least nearby as close as close as can be. We understand that there is come sight visibility issues here that we need to remedy in order to have good visibility and a safe entrance onto the road for future residences of these lots. By denying the request of a driveway on this piece of property you would essentially be denying somebody the use of 78 acres that lies north of Gettsy Creek Road is what would be asked of us to divide all 4 lots to the south of the road. There is going to be a lot to the north of the road no matter how you look at it because the road bisects the property by almost a half a mile through this piece of property. I just wanted to make a couple of quick key points about each one of these driveway locations and maybe try to paint you a little bit of a picture of how I kind of see the best way to remedy it and be able to allow a driveway here at each one of these lots. Lot 1, by change can you pullup the drawing for Bean Blossom Ridge? Can we zoom in there on the driveway for Lot 1, please? Is that as much as you can get it? Ok. Currently what we are proposing is placing a 22 acre lot at this location. It is currently a field and the filed is terrace so it remedies runoff naturally by these terraces. So, what I have calculated here is there is less than 1.5 acres of sleet flow falling down into the area where

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this driveway is located at. There is going to be very little watershed that is going to be creating sedimentation running south of the road and running into Stephens Creek. The other thing that I would like to note is south of Gettys Creek Road here there is approximately 180' feet of grassland there that would act as a filter for any sedimentation that would occur due to the disturbance for cutting back a little bit of the bank here. Of course there would be proper erosion control measures put into place to construct the driveway whether it be silt fences or hay staked bales to reduce the amount of siltation that comes off of what ends up being cut out of the bank. I would also like for you to note that there is almost 500' lineal feet between the grassland and Stephens Creek. This siltation would have to traverse to even get to the creek if we were allowed to be able to create this driveway. There is very minimal cutting that is going to need to take place for this. We are looking at plus or minus to feet of cut to allow for proper sight visibility here on Lot 1. We are going to forward here to Lot 2. Similar rundown there. This used to be the old home site. So, there used to be a house located here near the road and the driveway entrance approximately in this area here, was an old home site that had burnt down back in the 60's. This has been their way of accessing this to get in there to remove logging and also to remove hay off of these fields. So, it's not like these have not been used. I would also like to mention that back in January of 2009, there was a permit allowed for them to cut down and excavate this bank on Lot 2 for logging purposes to allow for semi-trucks to be able to come in and leave out of Lot 2. It had been granted before that they were allowed to disturb the soils at that location. We would just need to remove a little bit more material because the sight visibility of a semi-truck versus the sight visibility of a car is quite a bit different and there would need to be approximately 4' foot of cut that would need to be taken off of the end of this little hill for a fairly short distance. I am going to guess less than 50' feet and it's kind of tapering as the sight visibility nears the road. You know, a shared driveway situation it really kind of kills the aesthetics of this site. Essentially, what would be asked is if you were to enter Lot 1 where it is being proposed, you can see where the septic site is located at on the drawing and that is essentially going to put somebody driving right past the front of somebody's house in order to navigate across a rocky ditch, place another drainage pipe in underneath an abandoned pond in order to get to their lot, which is also going to require a person to obtain a maintenance agreement between the two parties. Who is going to be taking care of the driveway? There is going to be liability issues. Well, what if visits come and the driveway wasn't properly maintained and they were to slip and fall on the ice? Any number of things could arise out of a shared driveway situation. That is really all that I have to add here this evening and if you have any questions, I will be glad to answer any questions that you may have.

Kaczmarczyk: I just want to clarify because I too have been finding this whole driveway thing a little confusing. What you are asking for is to have a driveway to Lot 1 and a driveway to Lot 2 and have them both exist where the current, in use driveways are.

Deckard: Or as near as possible to those. Those are the safest locations.

Kaczmarczyk: Ok and staff is recommending that, you gave us 3 options but your recommendation was to eliminate the driveway for Lot 2?

Behrman: Yes. It still achieves their goal doing a 4 lot subdivision with 2 lots to the north and 2 lots to the south. We could say 0 to the north and just make sure that all of the buildable area that they have that is where those 4 lots could be to the south. But we also felt like in order to access

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the property safely that it does make sense to have at least one access point. So, we were in support of some disturbance in order to support one safe driveway.

Kaczmarczyk: Ok and he brought up the issue, if you had a shared driveway what that would have to cut across. I don't necessarily see an aesthetics issue myself but it did sound like it would be going across quite a bit of land. How much driveway would we be cutting from Lot 1 to the other, if we did a shared driveway?

Behrman: If they did share a driveway, there is a utility line that runs through the property and the driveway could almost just run right along with that and come through team back up with the original old cut that is up here. I mean, I am not a designer but I saw a way that you weren't going to be disturbing steep slopes, cutting through Lot 1 to access Lot 2. There might be a drainage pipe but there is going to be a drainage pipe at either of those locations.

Kaczmarczyk: Sounds good.

Guerrettaz: (Inaudible)

Behrman: Lot 1. Yes there is a disturbance but that is in the safest location. The Highway Department would not allow them to use the existing driveway that was there that would access Lot 1. They said it did not have the safe sight distance allowable. So, that is why they are requiring them to move it which then we see kind of a stopper to the subdivision. Because it doesn't meet all of our regulations for slope disturbance that we would have to clear up.

Deckard: By moving the driveway 54' feet as recommended by the Highway Department, this driveway is going to require the least amount of work for Lot 1. But I am just looking at this configuration here, we are still going to have to navigate a ditch and also some slopes in that area as well. It may not be triggering the red spots here in this case. Like I said, I still believe that those slopes are still going to be exceeding 18 percent in the ditch way.

Guerrettaz: In either case there is going to be disturbance. Will the petitioner need to file a grading site plan in order to do any construction, any removable of material to make the sight distance?

Behrman: It depends on the Plat Committee determining if those driveway improvements have to be required prior to final platting. We can sometimes allow for disturbance for a driveway cut to be tied in with other permits for structures. It depends on whether the Plat Committee is going to require them to make these driveway improvements prior to platting. But I think in order to get the driveway permit you might have to have a platted lot. In one case they did make them do the improvement on that house over there on Boltinghouse. They made those improvements required prior to the release of the plat. So, I am not sure what the Plat Committee is going to recommend.

Guerrettaz: Right.

Behrman: But if they don't and then they go and apply for their Building Permits and their Septic Permits, it is tied in with a reasonable amount of slope disturbance to access your building site. So, your driveway could go in without an actual Grading Permit. But there should be some form

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of permit on file.

Guerrettaz: So, what you estimate the disturbance to be if you utilize the existing driveway and clear up the sight distance issue?

Behrman: On Lot 2, you are saying?

Guerrettaz: Completely. Lot 2, yes. What I am trying to do is I am trying to sort it out and see what kind of disturbance if the balance of what disturbance we have here is fairly the same or really pretty minor and trigger this into a grading plan or some sort of, you know you mentioned the distance down to the creek, you mentioned the grass strip, we can do things that harness the sedimentation that could come to the south. We could keep an eye on that and we are making the slopes flatter, so long term we are not creating more of an erosion problem than what we have with steeper slopes anyway. That is what I am trying to do is find a way to look forward and say, ok you have got driveways that exist, we have got something that we can work with. We can remove the knob, make the sight distance work and have a review process down the road to make sure that we are controlling the sediment which is really what we want to do.

Behrman: Right.

Behrman: This is a photo, the one with the car in it, of Lot 2 access and the hillside that is preventing visibility.

Deckard: That is the lot that was excavated previously back in 2009. As far as sedimentation for Lot 2, I didn't really touch on that much but just directly across the street from this driveway is a farm pond and that is where the drainage flows to. This farm pond would essentially act as a sediment trap that would capture any erosion that would happen to occur with excavation here at this driveway.

McNeil: It appears to me that if were to go with the staff recommendation we would be actually modifying the petitioners request.

Behrman: For the 4 lot subdivision.

McNeil: It seems to me that shouldn't we act on their request and if they got denied maybe they could come back and ask for a variance that was consistent with what you are recommending, is that right?

Behrman: Can you repeat that for me?

McNeil: If we were to, it appears that what you recommended is not consistent with what the petitioner is requesting and therefore I am inclined to act upon their petition and if we were to deny it, it seems to me that they could come back and ask for a different variance that was consistent with what you recommend. Is that accurate?

Behrman: Well, the Highway Department really only deemed those two locations safe visibility

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sites with the alterations of steep slopes. So, if they want to continue to have two lots to the north we would have to issue a variance now. If they wanted to reconfigure their four lots to be more on the south side of the property, I am not sure I fully understand what you are getting at.

McNeil: Well, is the petition just to get a variance to disturb a slope without any, and they can do what they want with that permission, if they specifically said they want to disturb the slope for these two driveways?

Behrman: If they applied for permits for structures, if these two driveways are given the variance to allow for the slope disturbance then whenever they apply for a permit, those permits require that they don't disturb the steep slopes and the plat shows where there is buildable area. So, we are going to expect that any structures or any other disturbance only occurs on buildable area which is slopes that are less than 18 percent.

McNeil: So, if we granted their request as per their request, they would only be disturbing the slope for two driveways?

Behrman: Correct.

McNeil: Ok, thank you.

Deckard: And of course under the supervision of the Highway Department and what their requirements would be, just oversee making sure no sediment leaves the site.

Kaczmarczyk: Thank you. Any other questions from the Board? Thank you Mr. Deckard.

Deckard: I would just like to say one thing. You had briefly touched on whether we would have to come back or not if this petition was denied for the two driveway cuts, my client is from out of town. They live in Colorado and we would like to have determination one way or the other, whether it be at least the two driveways, most preferable by far, or a shared driveway situation. We would like to at least have that answer before he leaves here tonight.

Kaczmarczyk: Thank you sir. Is there anyone here tonight who would like to speak in favor of this petition? Seeing none. Is there anyone here tonight who would like to speak in opposition to this petition? Take your time.

**SUPPORTERS – 1902-VAR-09 – Bean Blossom: None**

**FURTHER SUPPORTERS – 1902-VAR-09 – Bean Blossom: None**

**REMONSTRATORS – 1902-VAR-09 – Bean Blossom**

Kaczmarczyk: Can you please state your name?

Johnston: Phyllis Johnston.

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

Johnston: Absolutely, yes.

Kaczmarczyk: Thank you. Please proceed and try to speak into the microphone so they can get this for the minutes.

Johnston: I cannot see the tv screens too well. I would like to request pictures that you have shown on the screen. Is this possible?

Behrman: Yes, I can share the staff report with you. Would you like a copy right now?

Johnston: No, mailed to me.

Behrman: Sure.

Johnston: My farm or acreage is nothing but timber and it's mainly for habitat. I am sure exactly where these buildings are going to be or where the driveways are going to be and that is why I request the pictures. So, can we postpone this for a meeting in the future?

Kaczmarczyk: I am not sure that this something that we can do. This information was disseminated and publicly available. Is that correct?

Behrman: Right. It was. I may have sent email to a relative of yours. Was he unable to get you a copy?

Johnston: I have a copy of the plat. But I would like the pictures of what they are showing here as far as driveways and where the lots are.

Behrman: Right. I thought I had emailed a link with the staff report. I think I did and I think I may have had to resend it because we had to add something to the staff report. I will check my records. Regardless do you want it mailed to the address on the card or do you want email?

Johnston: You can email it.

Behrman: Ok, it comes in the form of a link and then link is how you get to the report.

Johnston: Now the plat is hard to read. It didn't come through very plain if you can do something about that.

Behrman: I have it here if you want to look at it.

Johnston: Well, it's not going to do me any good, honey. I need my son to help.

Behrman: There might be a way that I could send a different pdf copy or mail a copy. We could talk afterwards as to which would work best for you.

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Johnston: Ok, very good.

Kaczmarczyk: I just wanted to let you know that as you have seen even with all of these pictures, it is awfully confusing for us to know exactly where these are going and I think almost physically driving past is the best way to see where some of these are marked as considered. If I understand correctly we don't even have pictures of where the proposed buildings would go yet. Is that correct?

Behrman: Correct.

Kaczmarczyk: So, we don't where on the property buildings would go at this point, so we couldn't share that with because it doesn't exist. We just have the driveway cuts and really with the pictures it's really hard to tell.

Johnston: Well, my concern of course is erosion. Because the area slopes there. So all of that has to be taken into consideration.

Behrman: Right. That was kind of the purpose of bringing this to the Board of Zoning Appeals. I didn't feel it was something that could pass at the Plat Committee as it did not meet all of the regulations required to approve a plat.

Johnston: Ok, thank you.

Kaczmarczyk: Thank you. Does anyone have any questions? Thank you very much. Is there anyone else here this evening who would like to speak in opposition to this petition? Come on up. Sir, can you please raise your right hand and state your name?

Tritt: Corey Tritt.

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

Tritt: Yes, I do.

Kaczmarczyk: Alright, please proceed.

Tritt: I don't know where to start. I am very confused by this whole thing and all of the pictures that I have seen today, even what I have heard today, I am still confused. But what I can tell you is if you bring up the picture of the google earth photo where I could show you where I live and what me and my wife are worried about. Basically right here where the barn is there is a home and there is a garage right to the west and that yellow line is our property line. That is also a wet water creek.

Kaczmarczyk: Can you move back to the microphone?

Tritt: I am sorry. So, that yellow line that divides the property on the north between mine and their property, I have a house, I have a garage. On the north and on the south I have a barn that is right

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up by the road. That yellow line which is the property divider basically is also a wet water creek. So, that is literally 30' feet from my barn or my garage, I mean and it goes all the way across under the road, under Gettys Creek and it goes all the way to Stephens Creek. I will tell you that there is a lot of water that comes off of that property into that creek. That is basically my property and that property is like the property line and there is a ton of runoff that comes out of those hills that comes into that creek. A couple weeks ago we had a lot of rain here it scared me that it was going to flood us out. When we bought the property we were told by the homeowners that in the 25-30 years that they lived there that it has never flooded. But if they cut in these driveways on the north side and start disturbing everything up there I am really scared that it is going to flood us out. The pond that he was talking about that is over here on the south side that is going to catch all of the silt, I don't even see how that is specifically possible. I mean, the way that those hills are up there, I mean, even when they came out to survey the property the hills are so high and tall back there they had to come knock on my door to go through my property to put the stakes up. So, if there is disturbance up there, you know, this is a little tiny 1,000' foot ranch home a crawl in the garage, if they start disturbing the ground up there and moving stuff around and doing that, they are going to flood us out and there will be nothing for us to do.

Kaczmarczyk: Is your property the one to the north of the road?

Tritt: Yes. Basically the only thing over there, it would be right there. I am a little short, sorry.

Kaczmarczyk: That's ok, I got it now.

Tritt: That would be the home right there and the garage and that wet water creek right there. The water that comes out of that hill is just on a normal rain is substantial. I mean it is unbelievable and if they start changing the grade up there and putting houses in and everything else, the amount of water that is going to come off of those homes, where is going to go? If it dumps in, you know what I mean, it is just very scary.

McNeil: Are you worried about where they are going to build a structure on top of the flat surface and that disturbance will cause more water to flow toward your house or are you worried about the driveway to get there?

Tritt: The driveway, both of them. The driveway getting there because the way that this property runs, it runs down like this and the street goes like this towards me. So, it already runs down that property and floods out the bottom of my driveway and everything right there and it has a hard time getting through the culvert to get to Stephens Creek already. If they put a driveway in up there that is just going to make it easier for that water to runoff faster. Then if they put a house right there, those are my concerns.

McNeil: So, you don't think they should be able to make any changes?

Tritt: I would, yes, that is my decision. Also there are other neighbors that I have spoken to and they feel the same way. Some of them have lived there their whole lives, 70 plus years.

McNeil: Does staff have any comments on this movement of water that he is referring to on how

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the petition would affect that?

Behrman: There is a perineal stream that runs through there. I think it was visible on one of these maps. You can kind of see it runs down the property line. All of those blue perineal streams, because they are in the Environmental Constraints Overlay, they actually have a 100' foot buffer on each side of the creek bank where no structures can go. It is a protection that is in Chapter 825. So, we know that within a 100' feet of basically his property line, there would not be allowed to be a structure without a variance. It would have to meet that stream setback.

McNeil: Same thing with the driveway?

Behrman: The driveway location is, the road kind of has like a little peak at the hill and the old driveway is lower towards his house and the recommendation is to put it at the top of that peak so that you have that visual ability and a safe way to see both ways. So where the water would flow if that driveway moved one way or the other, it is hard to say, it would require a little bit of extra drainage or engineering to maybe have it flow away from this property.

Guerrettaz: Let's go backwards for a moment... (Inaudible)

Behrman: I am sorry, that one has some contour lines. I also have the plat if you like to see the actual.

Guerrettaz: (inaudible)

Kaczmarczyk: Mr. Deckard, if you would like to come up.

Guerrettaz: Ok, so where is (inaudible)

Behrman: He is up kind of right in there.

Guerrettaz: So, if I look at the survey, the dashed line, the dotted line shows buildable area. Is that correct?

Deckard: Do you have a colored copy?

Guerrettaz: Yes.

Deckard: The magenta colored dotted line represents the buildable area.

Guerrettaz: Well, it looks like all of the buildable area falls south of that contoured area.

Deckard: The suggested place for the driveway was placed ontop of the peak where the drainage, the drainage is going to the east and away from, is it Mr. Tritt? It is going to flow away from Mr. Tritt's residence. The proposed septic field in this case is kind of located, I am going to point at this map here. This field has terracing performed on it where it has got several terraces for the plantings to control erosion and the sheet flow is not going to go toward the west. It is going to go

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towards the east where the proposed septic site is located at and any future development. The terraces is going to capture that rainwater and actually make it flow toward the old silo site, which is to the east.

McNeil: So, to be clear, you are saying that the disturbance that you are asking us to give you a variance is going to improve the water flow relative to this gentleman's property?

Deckard: I am not saying it's going to improve or negatively impact his property or his location or any runoff going to his home. Essentially the runoff that is going to occur is going to flow to the east and not to the west, which he lives to the west of the subject property and there is not going to be additional sheet flow going toward his property.

Guerrettaz: It seems to me that areas that are buildable on that drawing are south of that drainage wave that goes to the west and south of his home or there is a little knob up to the north but it drains back south into the drainage wave that drains south of his home. I don't see any of the water from the buildable area passing by Mr. Tritt's house. Am I reading that correctly?

Deckard: That is correct.

Guerrettaz: Ok.

Deckard: Anymore questions?

Kaczmarczyk: Anymore questions for Eric?

Guerrettaz: What I was trying to point out or at least understand, if you look at the drainage wave, that area that comes down, it looks to me that you are north of that and all of the disturbance is going to come in that or just south of that. So, it should be below you. That is why I asked Mr. Deckard.

Deckard: I can point it out to you. The area that he is talking about, correct me if I am wrong Bernie, this area on the sharp east is actually below your house so the drainage here would flow south of your house not toward your house.

Tritt: So, it's going to be below these.

Deckard: However the placement of the septic field is going to be here which will drain water in this direction and away from you and not toward you.

Tritt: Where is the house going to be?

Deckard: I don't know the exact location of the house and that would be determined upon....

Tritt: Ok.

Kaczmarczyk: Alright. Can somebody get near the microphones? Hopefully that clarified it for

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you.

Deckard: Hopefully that answered it.

Kaczmarczyk: Thank you. I do want to say that I appreciate that you brought these concerns forward. From what I am hearing I think your property is probably ok. But we do care about erosion and neighbors properties and all of the issues that you brought up so it is absolutely legitimate that you bring your concerns to us and hopefully you have had them at least somewhat addressed.

Tritt: Thank you.

Kruzan: I have a question of staff. Do we agree that this is the way that the flow will go? I want to say absolutely no offense to Mr. Deckard at all but I don't want to rely and this would apply to any situation any case, I am not going to rely on the answers of someone with vested interest in the property being developed to give the valid answer to a neighbor or to anybody else.

Behrman: Right.

Kruzan: So, I am asking staff, we also believe flow is not an issue here?

Behrman: Looking at this partial blowup I did of the plat map and the property line foot, we are going to buffer this creek 100' feet, which is not reflected on the plat yet. I stopped my review once I realized we had this other issue and that gentleman's house is kind of up here, I believe. If the home goes where the septic is I think that would kind of hit down here and flow one way or another down the road, depending on the design of the driveway. It probably hits that hillside coming in. Because you are going to have that 100' foot buffer coming out the likelihood of that much of this one home, I don't know.

Kruzan: Can I ask, I don't know, what does that mean?

Behrman: We have to see a design submitted. We get a lot of calls about assumptions and what ifs. It is not until we actually see an actual site plan and where the location is going to go that we can really give a definitive answer.

Kaczmarczyk: Thank you Tammy.

Kruzan: Are there other properties, Mr. Tritt mentioned other neighbors are concerned out there. Looking at the direction we think it will go, are there issues? Are we way beyond the case before us in asking these questions?

Behrman: Just because the Health Department permitted that septic system to go right there doesn't mean that another person who purchases that lot could put it somewhere up the hill. Also, there is not a reason why someone could not vacate this lot out of the plat and do a 4 Lot Sliding Scale Subdivision on it and add 4 more buildable lots.

Kruzan: Thank you.

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Kaczmarczyk: Any other questions for staff or anyone else we have heard from so far? Ok. Did you have something else to add, Mr. Deckard?

Deckard: There was a profile in your packet on page 109 and 110 that might have answered that question on the direction and how the road lies and so forth.

Kaczmarczyk: Thank you for that and we will continue.

Tritt: I am sorry.

Kaczmarczyk: Not a problem.

Tritt: I still feel very nervous about the water issue. Because there is not really a straight forth answer. There is a lot of I don't knows and it should bes and that makes me nervous that I am going to be flooded out of my home because somebody didn't know or it should be going this way. That is just my concerns because I live on this property and I can see that property and there is no way that I see this water not affecting us. I would just like to say for a lot of I don't knows and a lot of it should go this way, there are a lot of undecidables, you know.

Kaczmarczyk: Thank you. That does appear to be the case. I appreciate you letting us know. Is there anyone else in the public who would like to speak in opposition to this petition? If so, come on down. Grab a card and put your name and address please. If you could raise your right hand and state your name.

Ossello: Jayme Ossello.

Kaczmarczyk: What was the last name?

Ossello: Ossello.

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

Ossello: Yes, I do.

Kaczmarczyk: Please proceed.

Ossello: I am Corey's wife. We just purchased the property as you just heard and our discussion since we have heard about this has been about the water. I know that he brought up some valid points and I just want to say with the driveways going in and them being on a slope, anytime that you remove trees and grass and stuff from a property that 100 percent affects the watershed. I know that you folks all know this I just want to reiterate it because for us this is very nerve racking for us. We have a creek right next to our house and if the driveways go in that will 100 percent affect the watershed. No one giving us a straight answer and I know he just said it but I just want to kind of reiterate it and anytime that the land is disturbed it is going to affect somebody somehow. That is all.

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Kaczmarczyk: Thank you. Any questions? Thank you very much. Is there anyone else here is evening who would like to speak in opposition to this petition? Seeing no one else. I guess we are back to the Board for discussion or a motion.

**ADDITIONAL QUESTIONS FOR STAFF – 1902-VAR-09 – Bean Blossom**

Kruzan: I just want to go back to Michael's very, very first question. Because I still don't understand. Again, you gave a good answer. I just don't understand where we are with this. When a petitioner comes forward and makes a specific request and staff recommends approval, but really not approval of what they are asking. It leaves me in a little bit of a quandary. So, to me in very layperson perspective, with a petitioner who has said, I want to build a pink house and staff said we recommend approval of your purple house. That is what I hearing. Is that they have come forward and asked for something specific and staff has said we recommend approval. But it has to be something different. Is there a time when we should just vote up or down on what the petitioner wants and tell them that there is another option that they can come in with and make that request? Or should we always be trying to, I know we do, we do have conditions that we put on things but this just seems like something that if we were to approve what staff is recommending, then actually the petitioner would be opposed to it.

Schilling: In situations like that in the past we have allowed the petitioner to amend their petition to incorporate staff's recommendations. If they don't then you vote on it and if they came back with something that the staff recommended later then you could treat it as a substantially different petition and it wouldn't have to wait 6 months or any waiting period.

Kruzan: Ok.

Guerrettaz: One of the options is to approve both access sites to the north, for the proposed Lots 1 and 2 as shown in the Preliminary Plat. That was the 3<sup>rd</sup> one. The 2<sup>nd</sup> one is approve only one driveway to the north for less disturbance and then the other one which the other one was denied a variance for slope disturbance in both locations. So, number 3 would meet what the petitioner is asking for. Is that correct? Number 3?

Behrman: Yes.

Guerrettaz: Ok, so I think that we would be within the confines of approval if we saw that and I that because I see we are using something that is predictable for the most part and they are modifying those locations in order to gain sight distance. Again, am I correct on that? So, if we follow up and we can follow up with either our recommendation, or excuse me, our motion and have them follow up with an erosion control plan that is going to satisfy and make sure we don't have things going out onto the road for this area that they have got to clear out in order to get sight distance. Because if it doesn't that is still an existing driveway. I mean, I think the sight distance is probably is more important criteria that we could look at and I think that we could put a more robust verbiage in the motion for a grading and erosion control plan administered, put in place by the petitioner and checked by staff that we can meet both of those goals. That is my feeling.

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**FURTHER QUESTIONS FOR STAFF - 1902-VAR-09 – Bean Blossom**

McNeil: It seem to me that the staff recommendation of a combined driveway will result in disturbances that are well away from the remonstrators property and I can't see when I look at the map how it could anyway affect water flow to their property and therefore **I would make a motion under case 1902-VAR-09 for Design Standards Variance Area 3 Slope Disturbance, as per the staff recommendation approval for the combined driveways.**

Kruzan: I will **second** that.

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

Kruzan: If we have any discussion at all. I want to make sure that staff agrees, I think it is a certainty but again I want to make sure. I ask staff, I think that this does mean that the proposed, the drive would be a greater distance from the Tritt property.

Behrman: I am so sorry that my staff report had the error of the approval. We want to have one safe access to the north. I made a call that I thought it was the one that was more west, which is Lot 1, which is closer, it would be the one that would be the better. Just looking at the engineered drawing and the slope maps it seemed like that would be less disturbance and it is at the top of a hill where they are wanting, the Department of Public Works is wanting to place it. How the pipe is angled might make a difference on how the water flows off of that driveway.

Wilson: To clarify on the motion, is the motion to approve the variance with 2 separate driveways or 1 combined driveway?

McNeil: Combined.

Wilson: So, basically the staff recommendation.

McNeil: Partially, this because the petitioner has indicated that they want an answer tonight and the remonstrators are concerned about any distance near or adjacent to their property and I think this motion address both of those concerns.

Kaczmarczyk: Do we have any more discussion as Mark was right there is always room for discussion after a motion. You are correct.

Behrman: Can I make a clarification? My recommendation was for Lot 1m, which is the one that is more west. Were you envisioning more of the one for Lot 2, which is the more east and farther away from Mr. Tritt's property with the drainage concern?

McNeil: Is the driveway for Lot 2 is pretty much there, correct?

Behrman: Yes, it's there.

McNeil: And we are talking about having a branch off of driveway number 2 over to number 1.

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Behrman: Ok, so that would be different from my original recommendation, which was worded very poorly.

Wilson: It was the other way around.

Behrman: Yeah, it was.

McNeil: So, we need to amend the recommendation.

Behrman: The condition.

McNeil: That the proposed Lot 1 access should not be used as it appears Lot 2 access would be less disturbance and the shared driveway would be utilized using driveway 2 and the access to 1 would be from driveway number 2. Is that correct?

Behrman: **The proposed Lot 1 access should not be used as it appears Lot 2 access would be less disturbance and the shared driveway could be utilized to access both northern proposed lots.**

McNeil: From the driveway to access.

Behrman: Correct.

McNeil: **My motion is so amended.**

Kaczmarczyk: Does the second stand?

Kruzan: Yes, **second.**

Kaczmarczyk: Ok and do we have any further discussion? If not, Larry can you call the roll please?

Wilson: Sure will. The vote is on petition 1902-VAR-09, Bean Blossom Ridge ECO Area Variance. The motion is to approve the variance in regard to slope disturbance for the entry off of Lot 2. But not the entry off of Lot 1. With the understanding that Lot 1 would be accessed through a shared driveway from the Lot 2 entrance. Is that correct?

Behrman: Yes, that makes sense to me.

McNeil: **It would have partial shared. There would be an exclusive segment from driveway 2 to the Lot 1.**

Wilson: Only 1 entry would be disturbed which is Lot 2.

McNeil: Ok.

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Wilson: I think we will straighten it out. Mark Kruzan?

Kruzan: Yes.

Wilson: Bernie Guerrettaz?

Guerrettaz: No.

Wilson: Peter Kaczmarczyk?

Kaczmarczyk: Yes.

Wilson: Michael McNeil?

McNeil: Yes.

Wilson: The variance is granted subject to the amended findings.

**The motion in case 1902-VAR-09, Bean Blossom Ridge LLC ECO Area 3 18% Slope Variance to Chapter 825, in favor of approving the variance with the amended findings, carried unanimously (3-1).**

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**NEW BUSINESS**

**12. 1902-VAR-10      Circle K Changeable Copy Sign Variance to Chapter 807**

One (1) 1.02 +/- acre parcel in Van Buren Township, Section 12 at 2520 S Leonard Springs RD. **Zoned LB.**

**BOARD ACTION:** Kaczmarczyk introduced the petition.

**STAFF ACTION:**

Kruzan: (inaudible)...the signage, I mean it's not the result of anything that has happened here?

Nester: No.

Kaczmarczyk: We used to seem to get these every two or three months and then it's been a few years. So, they were just piling up.

Nester: This is a variance request for Changeable Copy/Digital Sign Variance. The location here is 2520 South Leonard Springs Road. This is an existing gas station and they are looking to change out their signage. The zoning is Limited Business. In the Comprehensive Plan it is MCUA Mixed-Use and the site conditions, they have an existing pole sign that received variances in 2013. The photos here that I am showing is an existing pole sign. The petitioner would like change out the existing signage as proposed in the packet and add an additional diesel sign as well as expand this regular gas sign. They would still be within the limits of their approval from 2013 to have the pole sign be over the maximum. The maximum square footage if someone wanted to put up a pole sign today would be 60' square feet. They have 85' square feet and they are proposing to lessen that actually with the proposal. To change out the signage they will actually make the pole sign a little bit smaller but increase the changeable copy signage. They would be reducing the pole signage by about 10' square feet. But increasing the digital sign square feet to almost 20' square feet, whereas right now I think it's around 3' square feet. This is a bird's eye view of the property. They are right next to Walmart, Big Red, there are few other commercial properties nearby and it is adjacent to the City of Bloomington. The petitioner's request here to change out the signage and add digital signage. The other signage change out for the sight will be compliant with Chapter 807. The petitioner's request is in front of you. The regular and diesel signage would be in the configuration of design as shown if approved and the real reason that they are before you again, is to enlarge the existing unleaded/regular gasoline sign and to add diesel gasoline changeable copy digital sign. The recommended motion is to deny the Design Standards Variance for the Changeable Copy/Digital Sign Requirement per Chapter 807, based on findings. I will take your questions.

**RECOMMENDED MOTION:**

Staff recommends **denial** of Design Standards Variance 1902-VAR-10 to expand the amount of changeable copy (digital) signage permitted as a result of the findings of fact.

**FINDINGS OF FACT – SIGN REQUIREMENTS (Changeable Copy)**

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

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

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

**Findings:**

- The ordinance presumes that the Prohibited Signs standard serves to protect public health, safety, morals, and general welfare;
- Chapter 807-6, General Sign Requirements, (B) Prohibited Signs, (2) states that “All animated or changeable copy signs (including digital billboards), or signs which move by mechanical means or by the movement of air are prohibited.”
- The adjoining property immediately surrounding the site is principally commercial.
- Location outside of right of way does not negatively impact site triangles for drives or site distance;
- Sign would be lit by LED components (Exhibit 2);
- 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:**

- The sign will be located outside of the right of way;
- The pole sign structure is pre-existing and therefore does not have to meet the required 10 foot setback from right-of-way;
- The proposed sign will be replacing existing signage on the pre-existing pole sign;
- All other design standards for the proposed signs would be met such as height and location;
- The total square footage of signage on the pole sign will be reduced to 75.58 square feet instead of 85.01 square feet. However, the sign face would have 19.8 square feet of changeable copy (digital) signage instead of the current 2.69 square feet, which is there currently;
- Location outside of right of way does not negatively impact site triangles for drives or site distance;
- 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:**

- The allowance of a changeable copy sign for a fuel station is consistent with other fuel stations in the area;

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- The comprehensive plan states that “*Wall- mounted and monument signs are appropriate; pole signs and roof-top billboards should be prohibited.*” This proposal would intensify the use of the pre-existing pole sign;
- Many fuel stations have converted their fuel signs to using the LED lighting technique in the area;
- 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 ordinance presumes that the Prohibited Signs standard serves to protect public health, safety, morals, and general welfare;
- Sign will clearly list fuel price using LED lighting;
- Sign price will be changed via remote control and eliminate the need for a person to manually change the sign in various types of weather and traffic conditions;

**(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:**

- The proposed changeable copy (digital) sign would be used to communicate to the driving community the price of fuel at that particular fuel station in a safe and timely manner;
- The digital sign would not change more than eight times per day to conform with the Monroe County Zoning Ordinance;
- The sign location is consistent with standard regulations;
- Adjoining properties are commercial in nature with one residence to the west;
- 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:**

- A changeable copy sign should not have any significant environmental impacts;
- The LED sign would be conforming to the illuminated sign requirements:  
***807-6(A) Illumination: Illuminated signs are permitted, subject to the following:***

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*1) The source of illumination for externally illuminated signs shall be located at the top of the sign and directed downward toward the sign face and must be shielded from view of oncoming traffic;*

*2) The source of illumination for internally illuminated signs must be completely enclosed within a translucent sign unit, or, if attached to the sign face as a design element, may be provided only by translucent tubes, tubing, bulbs or fixtures.*

*3) Illuminated signs may not produce heat or glare in such a manner as to constitute a nuisance (e.g., shining into a residential building) or a traffic hazard (interfering with a driver's vision); and,*

*4) The source of illumination may not flash, shine intermittently, or be used to create a strobe effect.*

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

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

**Findings:**

- Property value tends to be subjective as it is difficult to anticipate adverse effects.
- Subject to concerns brought up during the hearing;

**(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 property has one digital sign that received a variance in 2013. The petitioner would like to enlarge the sign and add an additional digital sign to the property for a total of 19.8 square feet of changeable copy (digital) signage on the property, versus the current 2.69 square feet;
- There does not appear to be practical difficulties in the use of the property as there is already a digital sign permitted.

**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 – 1902-VAR-10 – Circle K**

McNeil: Why are you against this?

Nester: Good question. This sign here was part of a variance from 2013 and the original recommendation in 2013 was to deny of the regular gas signage as you see here. The petitioner is asking to intensify a pole sign which is explicitly something that we wanted to get away from in the Comprehensive Plan as noted in the findings. The digital sign on the pole sign is intensifying that signage there.

McNeil: Do they have any alternatives?

Nester: Yes, I think like a different location, a canopy sign, and digital sign. The design here is that they would change the pole sign to add more digital to pre-existing legal sign. If it was on the side of the canopy that is something that the Comprehensive Plan doesn't explicitly state that they want to reduce the amount of pole signs in this area as part of the Comprehensive Plan. So if the digital sign was proposed on the canopy that may have changed the recommendation by staff.

McNeil: Are they competing with Walmart Fuel Station?

Nester: The Walmart Fuel Station when I drove by it has a canopy sign, I believe.

McNeil: But they are close to them?

Nester: Yes they are very close to it.

Kaczmarczyk: I am curious. I was here but I don't remember, do you recall what the vote was in that case? It was one of first one, I don't recall.

Nester: Tammy actually was the person who took this forward. The recommendation was to approve the pole signage to allow it to be bigger than 60' square feet that was existing. They allowed the digital sign and then the petitioner withdrew a request for I believe it was further sign allocation for the whole sight for the maximum. It was several requests.

Kaczmarczyk: Really, the thing is as a general rule the county wants to get rid of pole signs so now that they are asking for a change on the pole sign, that is an opportunity to say we don't really want these, so we don't want, you know, no because we would rather go the other direction. I mean, the sign is shrinking.

Nester: Well, the overall signage is shrinking, correct. But they still have the ability to go back to that 85' square feet because they have a variance. So, it's not just grandfathered.

Kaczmarczyk: Ok, thank you. Any other questions?

Kruzan: The definition of intensify, it's because there is more digital being used?

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Nester: Yes. That is expressly prohibited sign type that is not allowed in the sign code.

Kruzan: So, they are intensifying, implies it's more than what it is now and it is but it's also reducing the size of the corporate logo significantly. How is that not de-intensifying?

Nester: The signage that could be permitted, they are still able to go back up to the 85' square feet, so I understand your point that they are lessening the overall pole sign which should be less intensification but I think that the statement is more that Chapter 807 expressly prohibits digital sign. By allowing more digital sign, you are intensifying it.

Kruzan: Ok, thanks.

Kaczmarczyk: Any other questions for staff? In that case, we will move along. Would the petitioner or the petitioner's representative like to address the Board? Come on up.

**PETITIONER/PETITIONER'S REPRESENTATIVE – 1902-VAR-10 – Circle K**

Kaczmarczyk: Can you raise your right hand and state your name?

Schleicher: Justin Schleicher.

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

Schleicher: I do.

Kaczmarczyk: Please proceed.

Schleicher: This site is one of many here in the Midwest that is getting a rebranding of sorts. Circle K is actually having a global rebranding of their logo and they are also partnering with Shell on this location and several throughout the Midwest, during a form of a co-branding on the gas station canopy and the form underneath the canopy. This sign is a little unique so with that there were some modifications that were made as Jackie laid out. The existing sign 85.01' square feet with reconfiguring the logo, using the bottom existing cabinet that the k and the regular is in today and then modifying the top cabinet, we actually brought that square footage down I believe to 75.6' square feet. But the real reason that we are here is obviously is the variance, increasing the square footage of the changeable copy. We feel that the square footage we presented and I believe it was somewhere around 20' square feet or about 27-28 percent of those signs as a whole being LED digits feel like that visually feels up the space of that bottom cabinet. One thing that has changed on this site is that it has gone from just posting regular price to posting a diesel price as well through a diesel offering at the location. That is something here and I do have a question clarification, Jackie because I think we talked earlier this week. You can see on the rendering there above next to the regular pricer there is it shows a bunch of alphanumeric digits there and that was something you didn't catch initially. Is that correct?

Nester: Yes.

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Schleicher: Just for full transparency here that is actually what Circle K has been utilizing in the markets as an easy pay toggle. They have a program for their customers that they offer and there is a similar program here in Indianapolis for a gas company named Rickers where actually offer their customers discounts that allow them, I believe it is just to kind of causally credit or debit versus credit. So if you use your debit card you can save 6 cents a gallon. But I do want to say that it is a toggle, the definition is it flashes. With that being said a toggle would probably require a variance of its own. Correct? Since it's animated and it changes every 5-6 seconds. So a toggle is for easy pay and the price changes. So say its \$2.45....

Nester: But does it go back and forth between the same message?

Schleicher: It does. So what it does is say the price is typically \$2.45 on the screen, the little toggle area there with the white digits would display the correct price, I believe it is every 6 seconds. I think it can be modified but I am going to use 6 seconds because that is what is in my head. When that 6 seconds is up then that screen changes from credit easy pay and the price would go from \$2.45 to \$2.39. After 6 seconds it would go back to credit and display \$2.45 on the gas. So, it only affects the gas pricing. I didn't know exactly what that would entail there, how you guys would view that. If you guys have ever come across that. I know this is something completely different but while I am here ....

Wilson: We would view it as an animated sign.

Schleicher: Ok, so it would be a variance all of its own.

Wilson: Yes.

Schleicher: Ok. So back away from that. I guess that also does affect this because if Circle K is going to take an approach that if they can display the easy pay toggle they would like to have a separate line item that would say easy pay. So, you would have a regular easy pay and a diesel. I would still like to see if we can, I think I have got and 19.9' square feet as well I think it what is in that there we were requesting, I would like to kind of still hit that number but reutilize it and add an extra set of digits. But I don't know if that's the same square footage that I am asking for just spreading out, I mean if that is still the same variance.

Nester: If you have got 19.9' square feet of changeable copy and you then split that into 3 digital copy signs that would still be on the pole.

Schleicher: Ok, and that would be 19.9' for each side not both sides. So, that would still be and really you know, the 19.9' would be for regular, diesel but we would kind of shrink that size, chances are its going to be less than that when it is all said and done. Because that has small digits. I have got a few additional artwork that I would like to share. If that works for everyone else.

Nester: It's up to you. This kind of changed on Monday before the packet went out on Wednesday. So we had a different proposal before but if you want provide alternatives.

Schleicher: I got word that hey, we are not branding as Circle K we are branding as Circle K Shell.

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So the sign may change. (Inaudible) That's all that I have.

Kaczmarczyk: Any questions for the petitioner?

McNeil: So, we are here to decide on changeable copy but instead of 2 lines with an extra line that is exchanging between cash, well, we will still have 3 lines, except one will have numbers instead of a word, its changing back and forth.

Schleicher: Well, no it won't. It would be flashing but if there was a 3<sup>rd</sup> line it wouldn't be flashing. It would just be static at that point so all 3 prices would need to be changed out once a day.

McNeil: That little sign next to where it says regular, that would say cash or...

Schleicher: If there is a full 3<sup>rd</sup> line item for the regular easy pay diesel that toggle completely go away.

McNeil: Ok.

Schleicher: So it would be like when you used to pull up to a gas station and they actually have a full sign for regular and diesel gas. We would just add a 3<sup>rd</sup> line item.

McNeil: Thank you.

Kaczmarczyk: Any other questions? Thank you very much. I will ask anyone here to speak in support of this petition? Seeing none. Is anyone here to speak in opposition of this petition? Just figured, you never know if Richard was going to speak again. Alright, seeing nobody from the public. I will add a quick word. I am pretty sure 6 years ago I voted to approve the sign but I was brand new. I don't really recall. I don't personally have a problem with sign having 2 lines with the diesel. I noticed the diesel sign currently is just a little sign down on the ground that actually requires motorist to shift their vision from the pole sign down to the ground if they want to see both prices. I think it would be safer to have the diesel prices on that sign. The animated copy is actually a separate issue and I am not fond of that. I am also not fond of the idea of having a 3<sup>rd</sup> price up there because that would really be increasing the digital amount. I think that element of it is unnecessary. I understand why you want to advertise the discounted price. I don't think that is something you really need to have on the sign. When a motion is made, I am pretty much laying out for you guys how I think. I am all for that sign without the animated copy. But I don't think I would be in favor of a sign with 3 lines.

**SUPPORTERS – 1902-VAR-10 – Circle K: None**

**FURTHER SUPPORTERS – 1902-VAR-10 – Circle K: None**

**REMONSTRATORS – 1902-VAR-10 – Circle K: None**

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**ADDITIONAL QUESTIONS FOR STAFF – 1902-VAR-10 – Circle K**

McNeil: Isn't more customary to advertise the lower price and then once they get to the pump they realize ...

Kruzan: I was curious about that, the diesel signs. Certainly something you see in other places you see the cigarette prices and other things. Are those signs allowed? We see them all over the place.

Nester: That has been removed since last week. They had a Temporary Sign Permit and they didn't extend that so it is technically not permitted without a Sign Permit.

Kruzan: Could you get something beyond the Temporary Sign Permit to put in a sign like that? Because that is what is going to happen

Nester: Well, it was changeable, yeah, it would still be a changeable copy.

Schleicher: It is just a little flip pricer that you will sometimes see at gas stations if they are temporarily showing something or the price sign is temporarily out. That is not too uncommon.

McNeil: Can you direct my attention to which of the findings are averse to the granting of the variance?

Nester: Yes.

Kaczmarczyk: I think page 141 that is where good old practical difficulties is. Michael did you find what you were looking for? Page 141.

McNeil: I am not seeing what exactly, which finding is a problem?

Kaczmarczyk: Well, it says there does not appear to be practical difficulties. That is pretty boiler plate.

McNeil: And there needs to be practical difficulties.

Kruzan: The property would be altered in a way, is that right? Yeah, you are saying character of the property included in the variance would be altered in a manner that substantially departs from the characteristics set within a relevant zoning district. That to me is it.

Nester: So, I have the character of the property exactly, so the character of the property included would be altered. That is based on the Comprehensive Plan statement that I added in there. Wall mounted and monument signs are appropriate pole signs and rooftop billboards should be prohibited.

McNeil: So, that finding assumes that there is no pole sign there.

Nester: No, it's saying that this is pole sign and that it should be prohibited and you are adding

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more digital copy to it.

Kruzan: This is trying to and I am fine if that is the goal you are trying to achieve but I think we should just say we are trying to do, he wants something changed, he gives us an opportunity to get rid of something that we don't think should have been there to begin with, that staff years ago felt like this shouldn't have happened and through the petitioners request the door has been opened to go back in time and get rid of something we didn't want in the first place.

Nester: No. It would just be denying the additional digital.

Kruzan: Ok, so what do you feel will happen if the request is denied, that they will just stay with the same sign?

Nester: That they could come back and ask for a digital sign on the canopy or somewhere else.

Kruzan: No, no leave it the way that it is.

Nester: Yes, leave it the way that it is.

Kruzan: They have got a corporate logo change and a relationship change so.

Nester: Well, they can change the top panel.

Kruzan: Alright, so Mobile can go to Shell.

Nester: Yes with the Sign Permit.

Schleicher: One thing that I do want to mention is that Circle K did, this is a little bit unprecedented with the Circle K Shell relationship and one thing we talked about was that one thing that I am being stressed when we are designing and making these changes is that Circle K is now the big dog on these signs. So, if you reface the, there is no way to reface the existing the way that it is today with Circle K being on top and Shell the way that the logo is designed with them being underneath, being the smaller of the 2. If that makes any sort of sense. So, I guess they will move back and forth on position of the sign where Circle K has kind of taken a stance and Shell has allowed them to have the top priority on the sign. If Circle K goes up where the Mobile logo is today and the Shell logo would have to go on the space where the Circle K logo is today. I know that probably doesn't make any sense or why that is even being brought up. I just know from my stance that is kind of what we have been up against.

McNeil: I have got a question. Shouldn't it be that the character of the sign would be altered? I don't see how there is such a difference between the old sign and the new sign that the new proposed sign materially changes the property. I think it maybe changes sign but is that right?

Nester: Yeah.

McNeil: It seems like you are asking us to undo previous variance because you don't like the pole

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signs.

Nester: The sign on the left, the existing sign if they wanted to come in and change any portion of that other than the portion that is digital they could do that with a Sign Permit and it can continue. It is an approved sign. When they are coming and asking for more digital signage on this pole sign to the extent that they are, they are changing the nature of the pole sign, which is something that we approved, or was approved by the Board of Zoning Appeals as a variance that was sought. Initially staff recommended denial. Further changes to the pole sign I think that it is just not something that the Comprehensive Plan sees further digital signage that is prohibited on a pole sign. I don't know if I am making any sense.

McNeil: I understand.

Guerrettaz: Along with what Mark was saying, if the denial or if the petitioner pulls the petition, whatever, it stays as is and potentially they can come in and do a petition where they put a digital sign on a canopy to suit their needs.

Nester: Yes. They would still have to come back for a variance or if the petitioner is asking for an alternate design, in front of you I guess that would be appropriate. But is in front of us is what we are deciding on.

Guerrettaz: I understand that. I was just trying to understand what Mark was thinking there. But it would stay statuesque and then if they wanted to put a digital sign on the canopy it would eliminate another, well, if they wanted to put a digital sign on the canopy that would be another variance process they would have to go through in order to obtain that.

Wilson: They would just get their variance for the digital. I think this is similar to expanding a nonconforming use when you think about it. We allowed it to be expanded before and now this an additional expansion of the nonconforming use. When the purpose of the ordinance is to eliminate a nonconforming use over time. That is the reason why we typically oppose an expansion of the nonconforming use. The idea is to move towards, when they make an investment move towards compliance rather than to invest in expanding what we don't want. If that makes any sense.

McNeil: Thank you.

Kaczmarczyk: Anyone else have anything to say? Alright. I will entertain a motion.

McNeil: I have a motion.

Nester: Did you ask for the public to speak?

Kaczmarczyk: Yes.

**FURTHER QUESTIONS FOR STAFF - 1902-VAR-10 – Circle K**

McNeil: **In case 1902-VAR-10, Design Standards Variance Chapter 807 Signs, Changeable**

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**Copy I would move that we deny the variance based upon the findings of fact.**

Schleicher: Is this still up for discussion?

McNeil: Pardon me?

Schleicher: Does this allow for discussion now that a motion has been made?

Kaczmarczyk: Once there is a motion and a second then we can discuss it. I assume we can get input from the public. I don't have my Roberts rules in front of me. So, we have a motion and a second.

Kruzan: **Second.**

Kaczmarczyk: Yes. I am fine if you have something quick you want to add.

Schleicher: No, I was just saying I do have here with me, with everything change with the easy pay I do have an option I would like to lay out that would reduce the square footage. Looking at the fact that there would be 3 lines ...

Kruzan: I am going to interrupt very respectfully. We are outside of either we want to pull this motion back or we want to keep on topic of this motion voted up or down and if its voted down, open to new ideas. But we are way out of our point of order. I am not directing this at you. This is in any circumstance. Do we want to table this maybe, may be a priority at this point? But trying to redraft it after a motion after it has been seconded....

Schleicher: Oh, I didn't hear a motion had been seconded. I am sorry.

Kruzan: It's alright. No problem at all. I think either we need to, do you want to withdraw the motion and table this and let the staff and petitioner work this out, then come back with some coherent? I won't vote for anything on the fly like this.

Guerrettaz: If we table it then the petitioner will not have to reapply.

Kruzan: That is what I am trying to, it doesn't sound like I am trying to help but I am.

Guerrettaz: Right, I understand that. I thought that was what you were doing.

Schleicher: So, by tabling it that would mean another meeting later on?

Kruzan: Yes.

Kaczmarczyk: If we table it he can then introduce more alternatives when we hear it again next month, which I think would address your concern that you had another option.

Kruzan: It has not been done yet. We can do it. Staff, how do you feel on that?

**DRAFT**

Nester: We can table it if that is what you, if you would like to come up with some alternatives and should because we can't have an animated sign with this variance. So, we would only be approving changeable copy if approved. We can certainly table that.

Kaczmarczyk: Michael, could withdraw his motion if he chose to.

McNeil: **I withdraw the motion.**

Kruzan: **I move we table case number 1902-VAR-10.**

McNeil: **Second.**

Kaczmarczyk: All in favor of tabling say "aye". Can I have some "aye" for tabling this? All in favor "aye". Aye.

Kruzan: Aye.

McNeil: Aye.

Guerrettaz: Aye.

Kaczmarczyk: It's tabled. Are you ok with this Larry?

Wilson: Yes, that works.

Kaczmarczyk: It is tabled until next month.

**The motion in case 1902-VAR-10, Circle K Changeable Copy Sign Variance to Chapter 807, in favor of tabling this case until the next scheduled meeting, carried unanimously (4-0).**

**DRAFT**

**REPORTS:**

**Planning/Wilson:** No report

**Legal/Schilling:** No report

**The meeting adjourned at 8:23 P.M.**

Sign:

Attest:

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Peter Kacmarczyk, Chairman

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Larry J. Wilson, Secretary

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