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**BOARD OF ZONING APPEALS
Regular Meeting Minutes
April 3, 2019 - 5:30 p.m.**

CALL TO ORDER

ROLL CALL

INTRODUCTION OF EVIDENCE

APPROVAL OF AGENDA

APPROVAL OF MINUTES

January 2, 2019

March 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, Margaret Clements

ABSENT: None

STAFF PRESENT: Larry Wilson, Director, Jackie Nester, Senior Planner, Tammy Behrman, Planner/GIS Specialist, Drew Myers, Planner/GIS Specialist, Anne Crecelius, Planner I

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 March 6, 2019 meeting with recent administrative changes as noted by Larry Wilson, carried unanimously.

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OLD BUSINESS:

- 1. 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.**

NEW BUSINESS:

- 1. 1902-VAR-11** **Gregory Residential Storage Structure Variance to Chapter 802**
One (1) 5.03 +/- acre parcel in Washington Township, Section 22 at 490 E Fawn Ridge TRL. **Zoned AG/RR.**

- 2. 1902-VAR-12** **Lippke Buildable Area Variance to Chapter 804**
3. 1902-VAR-13 **Lippke ECO Area 3 18% Slope Variance to Chapter 825**
4. 1902-VAR-14 **Lippke Riparian Conservancy Area Variance to Chapter 825**
One (1) 1.8 +/- acre parcel in Bloomington Township, Section 36 at 80 S Lori LN. **Zoned RE2.5/ECO3.**

REPORTS:

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

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OLD BUSINESS

1. 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:

Nester: Thanks Peter. This is a variance for adding digital signage to an existing pole sign for a gas station, located at 2520 South Leonard Springs Road. That is located in Van Buren Township, western part of the city. The current zoning here is Limited Business. The Comprehensive Plan has this as Mixed Use and the site conditions here. You are west of Walmart on Leonard Springs and State Road 45. The slope conditions here are fairly flat. Just some site photos. This variance just pertains to the digital copy that the petitioner would like to add to the site. The Circle K logo and the Mobil logo, those can all be changed out with just a Sign Permit. This is only pertaining to adding digital copy which is prohibited per Chapter 807, which is our sign ordinance. This is a bird's eye view of the property. The pole sign, as I mentioned is pre-existing, so it doesn't have to meet the setbacks but it is located outside of the right of way. Here is the petitioner letter stating their request for the digital copy and then different from last time they are proposing a smaller addition. Right now there is 2.4' square feet of digital signage and they are asking for an additional 2.4' square feet, a total of 4.8' square feet of digital copy on this sign. It would be back to back but because the width is not more than 48" inches, then we count one of the sides of the digital sign copy, it will be 4.8' square feet of digital on one side, 4.8' square feet of digital on the other side. But we consider it just 4.8' total for the purposes of the ordinance. We heard this last month and continued it and staff's recommendation has stayed the same. We still recommend denial for the Design Standards Variance for adding that additional digital sign, per the ordinance. I will take any 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:

(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

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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 4.8 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;
- 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 changeable copy (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:
 - 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,*

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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 4.8 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.

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

Kaczmarczyk: Anyone have any questions for staff? Alright, sounds like we are good. I am good. Is the petitioner here or the petitioner’s representative and would you like to address the Board? Come on up. We will get you sworn in.

PETITIONER/PETITIONER’S REPRESENTATIVE – 1902-VAR-10 - Circle K

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

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Schleicher: Justin Schleicher.

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

Schleicher: I do.

Kaczmarczyk: Thank you. Please proceed.

Schleicher: First off, the weather is much better on this trip down, so I appreciate that, appreciated the drive. I graduated from Bloomington, here at IU back in December of 2003. I always enjoy coming back. But we are here today to talk about the Circle K sign. Right now this site currently pumps 3 grades of gasoline and diesel, which I believe was added to this site after the initial variance back in 2013. I would hope that the individual that was presenting that case back then if diesel was there and out of the price sign that they would be able to argue the case back then to add diesel, but you know, that was then. Instead of showing diesel on this price sign, which typically if there is a second type of fuel they would typically show diesel, so Circle K is proposing to show and “Easy Pay” pricer. What the “Easy Pay” pricer is it allows the customers who participate in the program to save up to 6 cents per gallon. Obviously that is a good deal for Circle K and also for the customers, so that is why they want to add the second pricer for that reason. As Jackie mentioned there are 2 prices proposed on this price sign of 4.8’ square feet. Right now that is 6.4 percent of the total square footage for this particular sign. So, we think it is a very minimal amount of square footage. Typically municipalities that we work with allow us to have anywhere from 25 percent to 40 percent in square footage in digital copy. I believe this very minimal addition here to the changeable copy is hopefully a little more palatable. That is pretty much all that I have right now. I now that there was some mention in talking with Jackie about canopy mounted pricers. I don’t know if you can pull up the slide that kind of shows an overall view of the location. But typically on the canopy mounted pricers we see those mounted on the short side of the canopy, which on this particular site is fairly far back from the road, which will make it a little more difficult for the customer to see. The customers here in the area are obviously used to the pole sign there to look for the pricers. It would be less confusing for the customers if the price was allowed there and we could add the very minimal digital copy to the price sign. So, if you guys have any questions for me I would be more than happy to answer them. Thank you for your time, I appreciate it.

Kaczmarczyk: Thank you. I have a couple quick questions. I believe it was stated last month the overall square footage of the sign is getting smaller. Is that still correct?

Schleicher: Based on what the actual initial variance was for. I believe we were, Jackie, do you have that information handy as far as the total square footage, what the variance was for in 2013?

Nester: Yes, it was for 85’ square feet. So they are proposing it to be 75’ square feet. But because it’s a variance they still have the ability to go back up to 85’.

Kaczmarczyk: Ok, thank you. Second question, it wasn’t visible on the sign but I know that at the end of our discussions last meeting, it came up about the little animated section or something like that. Is that just off the sign now?

Schleicher: Yeah, so that is off the table since we got the clarification on the actual code for

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animation. I know in other markets they have had the “Easy Pay” as a toggle, so it flashes “easy Pay” and then the price change is below. These 2 prices that are shown in the artwork are static prices. Typically, I think they are changed once a day, no more than twice a day in a 24 hour period. There wouldn't be that toggle and in fact there would be no animation there. With the square footage reduction I believe adding the Circle K and the Shell up top and kind of boxing off that sign, kind of modernize it a bit, gives it a refresh and then also adding the additional “Easy Pay” is also good for both Circle K and the customer to help advertise that lower price for the customer.

Kaczmarczyk: Thank you. That is it for me. Anyone else have questions?

McNeil: First I have a comment. Whatever reason the acoustics in this room are terrible. You are this far from me and it's bouncing all over the place. I can't really understand what you are saying.

Schleicher: Ok.

McNeil: Maybe not use the microphone as much.

Kaczmarczyk: We are getting some feedback.

Schleicher: Is this better?

Kaczmarczyk: Much.

Schleicher: Well, sometimes I have been told I need to announce.

McNeil: No, you are good.

Schleicher: Let me try if I stand back a little can you pick that up on the microphone?

McNeil: Yes.

Kaczmarczyk: Anything else, Michael?

McNeil: Question. Do you acknowledge that the variance granted in 2013 resulted in a deviation from the Chapter 807 rule against having such signs?

Schleicher: Yes. I know that there is no changeable copy in the variance, I am sorry in the ordinance.

McNeil: Do you acknowledge that the variance you are asking for today is requesting a further deviation from that?

Schleicher: I am aware of that. I guess the only argument I can make against that is the 2 products being shown if there was a diesel, I feel that the argument could be made with the regular and diesel being different fuels that that would possibly be allowed. I obviously can't go back in time

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and tell you that but with the “Easy Pay” , say the regular and the diesel was allowed back in 2013 and approve, then we would be looking at the same square footage, same digits, so it would have been approved, I guess by the sign ordinance, if there was a variance. But yes, I do understand and any sort of additional deviation you give me would definitely be much appreciated. I know we talked about the canopy amount of pricers and that being up there and it seems like if we went that route that it would be allowed. But I think just due to the layout of the site, I think the pole sign option and put in that second pricer in there, is probably best for, best for the customer’s visibility and business’s visibility to the customers.

McNeil: Thank you. I think you are getting too close to the microphone.

Schleicher: Oh, am I? I am sorry.

Clements: Is it true then that really part of your request for this variance is to list 2 prices for the same gas?

Schleicher: Yes, it would be for both the regular gasolines. So, the “Easy Pay” is a discounted price below for the same grade of gas, yes. I can’t deny that.

Clements: Ok, thank you.

Schleicher: Yup.

Kruzan: And if I could add, I am really glad that Michael mentioned it because I really thought it might have been just me, the sound is really bad, if we can work on that. How will diesel be advertised to your customers? I know you have got the ground sign.

Schleicher: Diesel is currently not advertised. Part of the whole process was that diesel flip pricer was on the ground had to be removed.

Kruzan: Right, so that won’t be coming back.

Schleicher: It will not be advertised. I did discuss that with the customer, they would rather instead of advertising diesel they would rather advertise the “Easy Pay” as the option there.

Kruzan: So no additional advertising someplace else. Thank you.

Schleicher: Yeah.

Kaczmarczyk: Any other questions? No more questions for you. I think we are good for now.

Schleicher: Thank you.

Kaczmarczyk: Is there anyone here in the public who would like to speak in favor of this petition? Com on up, sir.

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SUPPORTERS – 1902-VAR-10 - Circle K

Kaczmarczyk: Hopefully there is a piece of paper and a pen there so you can sign in. If you could raise your right hand and state your name.

Dillon: Clarence Dillon.

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

Dillon: I do.

Kaczmarczyk: Thank you. Please proceed.

Dillon: First of all, I am going to take you to task about the comment about the microphone. There is some people here on your Board that don't speak to the microphone and at home I can't hear a single thing you say. That might be in CATS or it might be the distribution to my house. But all of my community television contact stations, if I have sound from 1 to 10, I have a 12 trying and the one I really want to participate in is channel 3. Because I love NASA, same thing. So, on all of them by especially these meetings. Ok, my comment about pole sites. I have made a life of driving little bitty cars. Somebody knows I drive a little bitty car. I drive a diesel.

Kaczmarczyk: One second, sir. Can you maybe get about 10 to 12 inches from the microphone? We are getting that feedback again.

Dillon: Well, are you getting it to you or are you getting it to the customers outside of the...

Kaczmarczyk: I will tell you when I watch these meetings on CATS, I have to crank the volume all the way up. So, I don't think it's an issue in your house. As regard to the feedback we are getting right now, I have never heard it in this room before from that microphone, so I think we have a new problem today.

Dillon: Well, I tell you several times a year I have got family that comes and stays in hotels and have gone to their rooms to listen. I get the same problem. So, again, pole signs. Driving a small car and trying to see monument signs down at this level is impossible for me, especially at this location. If I am choosing the lane that has somebody to the right of my that pulls right up in front of where a monument sign might be, now that's not the condition that is here right now. But it is a condition that occurs several places in both the city and the county where I cannot see the listed price for a product because my eyes are down about here. I am not like the guy in the Ford pickup truck with his eyes up about here. That blocks my view of any monument sign when I approach some place to make a judgement for a product. Secondly, my eyes are down about here, so my line of sight is blocked from any oncoming traffic to the right within the scope of my line of sight with that I have found myself several times coming to intersections and discovering quickly that there was a moving object behind that monument sign that my eyes down here could not see. So, that is another reason I dislike monument signs and I have been dealing with these for 25-30 years in my travels, not being able to find things or see things because they are monument signs down here. The worst was Buffalo, New York where the monument signs get covered up by snow for about

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90 days of the years. I have been there looking for a Sear Roebuck when the signs for the entire mall was about this tall and I couldn't see them. I will take one exception with the presenter, I drive a diesel and I would want diesel to be up on the sign. Having a sign that promotes one product for their program to make money it's for making money for them, and I don't mind them making money, to the exception of a whole lot of the rest of us and again, a lot of these guys getting diesel are in a truck this tall. But there are a lot more of us that are going to be driving these little diesels and I will tell you, Volkswagen just released 104,000 automobiles that had been off the road for about 4 years and Bloomington has whole truck loads or two of these being sold right now, specifically in diesel. I like the pole signs. I can see them from a distance. The pole sign at Circle K north of town that got closed down, I could see that thing from a distance. Of course, they came here and fought that battle for a good while to get their digital on the pole sign at a time when somebody was out there climbing up 12 feet in the area and putting little numbers. The pole signs do not inhibit my ability to see and appreciate the beauty of Monroe County. They do not. Thank you.

Kaczmarczyk: Thank you sir. Does anyone have any questions for Mr. Dillon? Alright, no questions for you sir, thank you. Is there anyone else here today who would like to speak in support of this petition? Anyone here who would like to speak in opposition to this petition? Seeing none. I will welcome motion, discussion, whatever folks want to do.

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

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

ADDITIONAL QUESTIONS FOR STAFF – 1902-VAR-10 - Circle K: None

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

McNeil: I have a motion.

Kaczmarczyk: Go right ahead, Michael.

McNeil: In case number 1902-VAR-10, Designs Standards Variance Signs Changeable Copy under Chapter 807, I would move that we deny the variance based upon the findings of fact.

Kaczmarczyk: **Second.** We have a motion and a second unless there is more discussion, Larry please call the roll.

Wilson: The motion is to deny 1902-VAR-10, Circle K Changeable Copy Variance based upon the findings. A vote in favor is a vote to deny the variance. Margaret Clements

Clements: Yes.

Wilson: Bernie Guerrettaz?

Guerrettaz: No.

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Wilson: Peter Kaczmarczyk?

Kaczmarczyk: Yes.

Wilson: Michael McNeil?

McNeil: Yes.

Wilson: Mark Kruzan?

Kruzan: No.

Wilson: The motion is deny 3 to 3, or the motion passes 3 to 2 to deny the variance.

The motion in case 1902-VAR-10, Circle K Changeable Copy Sign Variance to Chapter 807, in favor of denying the variance carried (3-2).

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NEW BUSINESS

1. 1902-VAR-11

Gregory Residential Storage Structure Variance to Chapter 802

One (1) 5.03 +/- acre parcel in Washington Township, Section 22 at 490 E Fawn Ridge TRL. **Zoned AG/RR.**

BOARD ACTION: Kaczmarczyk introduced the petition.

STAFF ACTION:

Nester: This is a variance request to build a storage structure on an otherwise vacant property and the location is on Fawn Ridge Trail. It is a 5.03 acre parcel in Washington Township. The zoning here is Agricultural/ Rural Reserve. One of the permitted uses in this zone is allow for a Residential Storage Structure, which is a structure that you can put on a property before you have a home on the lot, which is a primary use. The petitioner would like to add an accessory structure before a primary structure is on the lot. The reason that they are here today is because accessory structure exceeds 1,750' square feet, which is one of the requirement for a Residential Storage Structure. They would like to build a 2,184' square foot building. In the Comprehensive Plan this area is designated as Rural Residential. The site conditions here, there is a flat area pretty sizable for where they want to put the building and a future home on the lot. Here is the slope map as well. They do have a neighbor to the south but they do also own the property to the east. Here are some site photos. On the left you can see kind of a small shed on the far part of the property. This is where they want to place the building. It will be pretty far back from the right-of-way here and then on the center bottom photo is the driveway that they will use to access that area. On the right I just had a photo of Fawn Ridge Trail. It is somewhat narrow. It is paved and it's hilly. I have a photo standing in the property facing toward the road as well, you can get an idea for the residential nature of the area and the setbacks for the properties along this road. I also included an elevation idea for the schematic that they submitted for a Building Permit. The petitioner applied for a Building Permit to build the structure and Connie, our Zoning Inspector, notified them that they had to either make the structure 1,750' square feet for less or apply for a Residential Permit at the same time or talk to a Planner about applying for a Variance. Since the petitioner is not quite ready to move property, they didn't want to apply for a Residential Permit at the same time because it would lapse after if they didn't start construction within a 180 days and technically complete construction in 2 years is what the Improvement Location Permit requires. Here is another schematic of kind of what they are looking for. The maximum height in this area is 30' feet. They are nowhere near that but just to give you an idea for what they are looking for. Their site plan is a little bit difficult to see on this but their distances from the property lines are pretty sizable. I believe they are 205' feet from the southern property line and then you have 200' or more from the road and 80' feet from the east side. But like I mentioned they own that property to the east, which is currently vacant. Just a bird's eye view of the property. I did include a support letter from one of the neighbors that was sent in an email. That is before you. I haven't had any remonstrance letters from other neighbors. I did want to point out thought that in the findings I did a little bit research on other accessory structures that have been permitted on Fawn Ridge Trail within the last few years and the average size was about 600' square feet. But also want to mention that if the petitioner were to have a home on the lot there would be no limit, well, there 15,000' square foot limit to the structure, basically the amount of the structures on the lot. They are only having to apply for this variance because there is no home on the lot but it is their intention to eventually move there. Based on the findings, staff has recommended deny. Largely, because the intent of the

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Residential Storage Structure when it was added to the ordinance in 2004, it put a size cap at that time for those storage structures and they are exceeding that limitation and there is not a lot of support that staff could find to approve the variance based on findings. I can take any questions.

RECOMMENDED MOTIONS:

Deny the design standards variance to Chapter 802 for Residential Storage Structure Size Limitation based on the findings of fact.

FINDINGS OF FACT: Residential Storage Structure Size Limit

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

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

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

Findings:

- Approval of the variance would allow the petitioner to add a 2,184 square foot storage building on a vacant piece of land;
- The petitioner is otherwise limited to 1,750 square foot residential storage structure since there is no primary use on the lot;
- 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 E Fawn Ridge Trail;
- The petitioner will build the storage structure first, and then intends to build a home later;
- The storage structure will be connected to water or septic. They do have plans to connect the structure to electric in the future;
- 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);
- No residential zone allows for a storage structure larger than 1,750 square feet when there is no primary use (i.e. residence) present on the property;
- The proposed storage structure would be 202 feet from the west property line, which would be less visible from the road. In addition, they plan to be over 205 feet from the owner to the south, which is the closest residence to the petitioner;
- The purpose of the storage structure size limitation is so the character of a residential area can be maintained when someone opts to add storage structures without a residence on the lot;
- Other detached accessory structures that received Improvement Location Permits from 2011-present along E Fawn Ridge Trail include: 768 square foot storage barn (home present) – 2014, 600 square foot garage (home present) – 2014, 640 square foot carport (home present) – 2014;
- The proposed location of the storage barn is within buildable area and meets all other requirements;
- Conclusion: The character of the property included in the variance **would** be altered in a manner that substantially departs from the characteristics sought to be achieved and maintained within the relevant zoning district;

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

Findings:

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

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

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

Findings:

- See Findings under Section A(1);
- The proposed location of the storage barn is within buildable area and meets all other requirements;
- The petitioner owns the adjoining property to the east, which is also 5.03 +/- acres;
- 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

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

Findings:

- See Findings under Section A(1);
- Drainage from the proposed location of the storage barn will run northeast;
- The property owner owns the lot that adjoins to the east;
- 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 finds that there is no practical difficulty since the petitioner could either reduce the size of the storage barn, or apply for a residential permit concurrently with the proposed storage barn and no longer need the variance.

All variance approvals shall be considered to be conditional approvals. The Board shall have the authority to impose specific conditions as part of its approval in order to protect the public health, and for reasons of safety, comfort and convenience (e.g., to insure compatibility with surroundings). Variance approval applies to the subject property and may be transferred with 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-11 – Gregory

Kaczmarczyk: One question. I think you pretty much just said this but I want to get it clarified for the record. It is your believe that the petitioner could avoid the need for a variance by either A; applying for a Building Permit for Residential Structure now or B; shrinking the size of the building.

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Nester: Correct.

Kaczmarczyk: Either of those would avoid the need for a variance?

Nester: Correct.

Kaczmarczyk: Thank you. That is my only question. Anyone else have questions for staff?

McNeil: I have a question. Is there any history to tell us where that 1,750' square foot number comes from? Is it, do we have anything other than being arbitrary?

Nester: I pulled in staff report Exhibit 4 of the ordinance and the zoning amendment there and it just kind of states that they believe that there should be a cap on it and I don't know if there was a specific reason for that cap. If something like this came up in our office today, we would go back through and see what have a lot of variances been applied for or what are the average sizes of those structures that have required for a variance and how can we accommodate that in a text amendment. The point of a text amendment is to reduce the need for getting variances to accommodate things without a conflict in the character of residential areas.

Wilson: I don't the exact reason but it has something to do with a typical detached garage size and at one point it may have been smaller than that and they increased it because people where building larger structures.

Kaczmarczyk: Thank you.

McNeil: Thank you.

Kaczmarczyk: Any other questions for staff? Mark?

Kruzan: In the conclusion section, I am just trying to get the terms of art still, 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. Is that simply the size? Is that what that refers to or is there something more than that?

Nester: Yes, it's based on the finding that I have about the other detached structures along Fawn Ridge Trail being 768' square feet, 600' square feet and 640' square feet. Based on that I had that finding of the character with the size.

Kruzan: If there was a residence there and a permit was sought, we would not say that the character of the property would be altered in a manner that substantially departs?

Nester: Well, we wouldn't need a variance.

Kruzan: Right, so it allowed and we wouldn't make any judgement about the character of the property at that point.

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Nester: Right.

Kruzan: Ok, thank you.

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

PETITIONER/PETITIONER'S REPRESENTATIVE – 1902-VAR-11 – Gregory

Kaczmarczyk: If you could sign in please. Thank you sir. Could you raise your right hand and state your name?

Gregory: Charles H. Gregory.

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

Gregory: Yes, I do.

Kaczmarczyk: Thank you and is the green light on the microphone?

Gregory: Yes.

Kaczmarczyk: Alright, sounds good.

Gregory: Is this better?

Kaczmarczyk: I am not getting feedback so sounds good to me.

Gregory: Yeah, as state my name is Charles H. Gregory. My wife and I, Marilyn Gregory, bought this property about 15 years ago. The plan was to build a house. That was just about the time of I guess of the wars with Iraq and things and we could not get a house, anybody to have an estimate that would last over a week. Because the prices were just escalating and we had this price on this property already secured with backup offers though way behind us. So we knew were going to have to buy at one point, we got to get the property we will just have to worry about the house whenever. That is what we did. We own. We have got 10 acres that are two 2 acre lots that we have had and paid taxes on for 15 years now and life happens. But now we are looking at our kids are out of the house, I am retired and my wife plans on retiring in a couple of years. The idea is that I need to get a house built by the time she retires. I understand the variance and all but I guess as far, I guess in this particular case I am going by my case is, is we need, you know, the plan is to move our stuff into the storage and be able to have the house sections. If the workers want to build a section in the garage or whatever so that it's out of the weather and be able to use the storage area whatever that is kind of the idea. As I am already retired I have got hobbies. It didn't really show you but I have got a large military vehicle that takes up quite a bit of space and part of my hobby is take things and take them completely apart and recondition them and then put them back together. Which takes more, a lot more room than pulling one in and changing a tire what have you. Essentially our plan is to still build a house here but, you know, I guess, the land itself is a

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fairly substantial investment. This garage is going to be another fairly substantial investment so we are looking at the house is going to be, there is no way the house itself is going to be built for less than 300. There is going to be quite a bit of money put into this land. I don't want to get rushed. You know the problem is we have been talking with builders, looking around and things like that. But to be honest with you I needed this garage last year but things got in the way to where I couldn't get anything drawn up or worked out with the contractors to get it done. Therefore I am here now. I hate, really I am not going to get rushed into a \$300,000 decision where I am going to be having things nobody can give me an estimate on what it is going to cost in 2 years or in a year. We are working out the design and what is going to meet our needs at that current time. We are wanting to get this built and as Jackie pointed out this would not be an issue if the house was already there. This garage has, yeah, you can actually see the military vehicle right there. It is a deuce and a half by 25' feet long, 13 and half thousand pounds, you know, it takes up some space. As I was saying we are looking at if I can get the garage built that will allow us to get some of these things moved. Otherwise, I don't know what else, you know, I am not going to be able to cover it. I am not going to make a smaller garage. Basically I adjusted this size downward to fit a lot better and to aesthetically fit in. The design is going to be congruent to the house design that we have. It has got a lot of porch. The house going to have a lot of porch. The color is going to be similar so that it fits and I guess I felt that and my wife and I feel the picture that the she showed of deal there shows that on its own its going to be a fairly nice building. I don't think its going to be obtrusive or anything like that. I am going to state that I am applying for a variance and I am doing so I understand there are rules. But if the rules are put up for specific reasons, every reason that I guess none of them apply other than this 1,750 and I, it's not much more and I am certainly not going to build a smaller one and add on later. It really I guess I look at it that variances are for looking and seeing if there is any, I will put it this way, if what the rule is there to prevent, if it doesn't meet any of those qualifications, other than the arbitrary number that got put out there, that Jackie didn't know why its 1,750. I am going to say that you've, yes, I am here, I have shown what I have got. It is not going to hurt. It is not going cause any of the things as to why the rules was made and it should be a good neighbor. The one neighbor letter actually is 2 neighbors. 2 neighbors the 2 closest neighbors actually signed that letter. I guess at this point I can answer any questions.

Kaczmarczyk: I have one question or a couple, I think. I think I understand why you want to build the accessory structure first. Is it not an option or you to do them together?

Gregory: Well, as I aid, part of the problem, I could go ahead and initiate it and I thought I was going to be able to do that. Before I did this I spent a couple weeks and we went to some builders and thought let's see what we can do. But we know what we want and this is going to be our retirement plan. What is happening was we ended up having to keep on making compromises to point where we are 20 compromises. I know we can find a builder that can build with the materials we want built and that will fit what we have envisioned, like I said that works with, the garage will work well with. We have designed the garage to work well with the house that we have envisioned and I guess for no better the problem is simply and again I keep on getting stopped and I am thinking, you know, we are getting ready I have got the garage itself when everything is said and done is going to be probably a 100,000. Yeah, I guess I could be realistically I can't devote that much money both together at the same time. Like I say we have kind of put our sights, she has left me know when she is going to retire and so my plan is I have got to get to built the way we want it by then.

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Kaczmarczyk: And she is retiring you said in a couple of years?

Gregory: Well, I think the idea would be that we would probably be looking to get this built by this summer and then next summer or late the earliest would be late summer this year or spring next year we would start building. The idea is so we would be complete.

Kaczmarczyk: So, your potential starting to build dates are within 2 years. Is that correct?

Gregory: Yes.

Kaczmarczyk: Did I understand correctly that if he asked for a Residential Building Permit now he doesn't have to do anything on it for 2 years, or how does that work exactly?

Nester: The Improvement Location Permit says that you should start construction within 180 days and completed within 2 years.

Kaczmarczyk: How strong is that 180 days? Because it sounds like he would get started within 2 years.

Nester: Yeah.

Kaczmarczyk: It is just a recommendation in the code or?

Nester: There is permit extension fee that someone can apply for, so if there is a 2 year lapse on that permit and they are cognate of that and they still haven't started, they would need to extend the permit.

Kaczmarczyk: If they were started within 2 years or if they weren't finished, I am sorry.

Nester: Either.

Kaczmarczyk: Either. If he applied for a permit now and didn't start within a 180 days that's not something there is no mechanism to say you have to or fines or anything? The fines are only if he has to get it, he would have to pay to extend it beyond 2 years but there is nothing that says he has to start it in 180 days or something happens.

Nester: I would say that its complaint driven and for some of the sites that we have noticed where there is not construction starting or finishing in an appropriate time, we do contact them to get a permit extension. But, no we don't typically have a lot of staff available to enforce the 180 days.

Kaczmarczyk: Ok, but technically it is something that, I am still not really clear you say enforce, I am not sure if we hit 182 days assuming you had all the staff you needed, what actions could the county take for 182 days?

Nester: I think the idea is Building Permits are good for 8 years and we don't want to see that construction period extended out that long, more exposed ground, we just want people to start a

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project and finish a project in a concise time period. I would advised Mr. Gregory that if it wasn't in your 2 year time window we should apply for the variance and technically the ordinance says 180 days the construction should begin. I am going by the word of the ordinance.

Kaczmarczyk: Alright, thank you. I appreciate that.

Gregory: One of the other reasons that Jackie said I would have to have a site plan that would be the plan located on the plot the way I was going to and we have an idea but we do not have a design. We don't have a, like I said we are looking for an architect and such. But we would have to have that according to the way I understood it.

Nester: Yes. We need an exact site plan for issuing a Building Permit.

Gregory: We would have to have that before we even, when we presented to apply for the house permit.

Kaczmarczyk: Ok. That is certainly an important factor. Thank you both. That is it for me. Any other questions? Alright.

Guerrettaz: What was the interior of your building going be as far as, is it going to be concrete?

Gregory: Yes. There will be 6 inches of concrete on the inside and 4 on the porch.

Kaczmarczyk: Any other questions for Mr. Gregory? Alright, I think we are good for right now. Thank you very much sir.

Nester: I also want to make on correction in the staff report. There was one of the findings that said it will be connected to sewer and water and I meant to say "will not" be connected to sewer and water. It will only have electricity. I will find that and correct that for the record. That is under Findings of Fact, A2, it would not interfere with or make more dangerous, difficult, costly, the use of installation maintenance of existing or planned transportation and utility facility. It should say the storage structure will not be connected to water or septic.

Kaczmarczyk: Alright, thank you and I think somewhere else in the packet it says not, so it was correct elsewhere. Is here anyone here tonight who would like to speak in favor of this petition? Seeing none. Anyone here who would like to speak in opposition to this petition? Again, seeing none. Further discussion, motion?

SUPPORTERS – 1902-VAR-11 – Gregory: None

FURTHER SUPPORTERS – 1902-VAR-11 – Gregory: None

REMONSTRATORS – 1902-VAR-11 – Gregory: None

ADDITIONAL QUESTIONS FOR STAFF –1902-VAR-11 – Gregory: None

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FURTHER QUESTIONS FOR STAFF - 1902-VAR-11 - Gregory

Guerrettaz: I guess I would say the way he has went about this process seems very uniform, very well thought out, very regular. That is why I asked him what his treatment was going to be inside the building. You can modify but he is going to the extent that he is going to put concrete, so adding onto that footprint at some point when he does have this permitted to do that, it seems to me it would be an extra step for the permitting process or being able to (inaudible). It seems to me that it is an extra resource that the county put into to reviewing and addition building permit. I just did some real quick math. (Inaudible) So, my opinion is I am happy to support this. Those are my thoughts.

Kaczmarczyk: Thoughts always appreciated. Any other thoughts or a motion? Go for it.

Guerrettaz: **In case number 1902-VAR-11, Charles Gregory Design Standards Variance to Chapter 802, Residential Storage Structure Chapter 802, I move that we approve the variance as presented with the statement that Mr. Gregory has put forth and I have added the following, change in structure size (inaudible) with the added resources that staff would have to put forth to review any additional permits later is well worth the variance at that this time.**

Kruzan: **Second.**

Kaczmarczyk: We have a motion and the second. Was what Bernie said adequate to address what I think was it is a hardship?

Schilling: It is for you to decide.

Kaczmarczyk: I thought it was adequate. You were essentially saying that **there is a practical difficulty to enforcing it.**

Guerrettaz: I wasn't sure how to say that.

Kaczmarczyk: Yeah, well, practical difficulty is what we have go in writing here, so, yeah there is a practical difficulty to enforcing the ordinances as written without a variance. Ok, we have a motion and a second. Barring further discussion, Larry can you call the roll, please?

Wilson: The vote is on petition 1902-VAR-11, Gregory Residential Storage Structure. A variance from the development standards on size and the motion is to approve the variance based upon the findings as amended. A vote in favor is a vote to approve the variance. Bernie Guerrettaz?

Guerrettaz: Yes.

Wilson: Peter Kaczmarczyk?

Kaczmarczyk: Yes.

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Wilson: Michael McNeil?

McNeil: Yes.

Wilson: Mark Kruzan?

Kruzan: Yes.

Wilson: Margaret Clements?

Clements: Yes.

Wilson: The variance is granted 5 to 0.

The motion in case 1902-VAR-11, Gregory Residential Storage Structure Variance to Chapter 802, in favor of approving the variance, with the findings as amended, carried unanimously (5-0).

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NEW BUSINESS

- 2. 1902-VAR-12** **Lippke Buildable Area Variance to Chapter 804**
- 3. 1902-VAR-13** **Lippke ECO Area 3 18% Slope Variance to Chapter 825**
- 4. 1902-VAR-14** **Lippke Riparian Conservancy Area Variance to Chapter 825**
One (1) 1.8 +/- acre parcel in Bloomington Township, Section 36 at 80 S
Lori LN. **Zoned RE2.5/ECO3.**

BOARD ACTION: Kaczmarczyk introduced the petition.

STAFF ACTION:

Nester: This is a variance request for enclosing and existing uncovered deck. The property is 1.8 acres, located at 80 South Lori Lane and the zoning is RE2.5. It is in the Environment Constraints Overlay Area 3. The location is just east of town in Bloomington Township. The current zoning here as I mentioned is RE2.5 and in the Environmental Constraints Overlay Area 3, which is 18 percent. There is also a Riparian Conservancy Area here that is buffered per Chapter 825. The Comprehensive Plan shows this as Rural Transition and Open Space around the creek and the site conditions are that it is fairly sloped with the creek in the middle of the lot. I added in the staff report just a graphic showing the 100' foot buffer of the Riparian Area in comparison with the petitioner's home which is pre-existing and their deck is approximately 63' feet from the creek. So, the reason that they are triggering all 3 variances is because the uncovered porch is pre-existing but we need to issue an Improvement Location Permit for extending a roof line and also adding additional supports to the structure. Here is a slope map. It is in a fairly steep area. As you will see in one of the photos thought it has been graded for the walkout basement and also where the uncovered deck is located. Here are some site photos off of Lori Lane and the center photo is that existing uncovered porch or uncovered deck and then kind of a zoomed out view. You can tell that it's pretty steep back there. Here is a bird's eye view of the property and the petitioner's site plan. They had spoken with the Building Department so the Building Department's request is that they add 2 additional supports before they enclose it so that it's structurally sound and it meets building code. They are going to be screening in that deck, extending that roof line and adding 2 supports. Here is the view of the deck that the petitioner submitted. The area already has brink area laid down and those 2 existing supports are already sunk in concrete. It would just be adding 2 more and then enclosing that deck up there as well. One of the things that I wanted to note on this variance case was the hardship piece. In order to do any further maintenance and repair to this deck, including adding more supports which are recommended by the Building Department, they would be required to get these same 2 variances. These 3 variances are only applicable to the deck portion, so if they want to any further improvements to the lot, they would have to go back through the process to get further variances for this. Staff has recommended approval for Buildable Area, the Environment Constraints Overlay Area 3, as well as the Riparian Conservancy Area based on the findings and subject to Public Works reports. I can take any questions.

RECOMMENDED MOTIONS:

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

Approve the design standards variance to Chapter 825 for ECO Area 3 (18% Slope Requirement) based on the findings of fact.

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Approve the design standards variance to Chapter 825 for Riparian Conservancy Area setback 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:

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

Findings:

- Approval of the variance would allow the petitioner to screen and extend the roofline over an existing uncovered deck (180 sq ft), and add two additional supports as required by the Building Department;
- The disturbance will be limited to two additional supports for the deck;
- The site gains access via S Lori LN;
- The home and deck were constructed in 1973;
- The home and the deck are located within the riparian conservancy area and non-buildable area. Any changes to the home footprint, including the deck, requires three variances;
- The septic system is located to the east of the home in the buildable area;
- Since the uncovered deck is pre-existing, the disturbance required to add additional supports to screen in the porch is minimal;
- The screening in of the deck will not result in vegetation disturbance;
- 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:

- S Lori Lane is a Local Road maintained by the County Highway Department;
- The septic system is on the east side of the home and therefore will not interfere with the proposed screened in deck;
- 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:

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- 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;

(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 screened in deck meets setbacks from all property lines;
- Since the deck and home were built before the requirements for buildable area, any change to the structure in the future will require variances. This variance is only applicable to the screening in of the existing uncovered deck;
- 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;
- The screening in of the existing uncovered deck will create more impermeable area since the change will include a roofline extension;
- The existing uncovered deck is 180 square feet. The increase in stormwater runoff will be minimal;
- The two supports to be added for the covered deck will be near the existing supports placed in concrete and covered by a brick patio;
- There is no FEMA floodplain on the site;
- Conclusion: It would not promote conditions detrimental to the use and enjoyment of other properties in the area.

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

Findings:

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

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

Findings:

- The deck is pre-existing and will only change the total footprint by two additional supports, which requires three variances;
- There is a hardship in that the property owner cannot do any further maintenance of the pre-existing uncovered deck, including adding supports required by the Building Department, without variances.

FINDINGS OF FACT: Environmental Constraints Overlay Area 3 (ECO3) – (18% 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:

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

Findings:

- Approval of the variance would allow the petitioner to screen and extend the roofline over an existing uncovered deck (180 sq ft), and add two additional supports as required by the Building Department;
- The disturbance will be limited to two additional supports for the deck;
- The site gains access via S Lori LN;
- The home and deck were constructed in 1973;
- The home and the deck are located within the riparian conservancy area and non-buildable area. Any changes to the home footprint, including the deck, requires three variances;
- The septic system is located to the east of the home in the buildable area;
- Since the uncovered deck is pre-existing, the disturbance required to add additional supports to screen in the porch is minimal;
- The screening in of the deck will not result in vegetation disturbance;
- 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:

- S Lori Lane is a Local Road maintained by the County Highway Department;
- The septic system is on the east side of the home and therefore will not interfere with the proposed screened in deck;
- 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;

(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 screened in deck meets setbacks from all property lines;
 - Since the deck and home were built before the Environmental Constraints Overlay 3 (18%) requirements, any change to the structure in the future will require variances. This variance is only applicable to the screening in of the existing uncovered deck;
 - 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**

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

Findings:

- See Findings under Section A(1);
- Drainage on the property runs south;
- The screening in of the existing uncovered deck will create more impermeable area since the change will include a roofline extension;
- The existing uncovered deck is 180 square feet. The change in the runoff will be minimal;
- The two supports to be added for the covered deck will be near the existing supports placed in concrete and covered by a brick patio;
- There is no FEMA floodplain on the site;
- Conclusion: It would not promote conditions detrimental to the use and enjoyment of other properties in the area.

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

Findings:

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

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

Findings:

- The deck is pre-existing and will only change the total footprint by two additional supports, which requires three variances;
- There is a hardship in that the property owner cannot do any further maintenance of the pre-existing uncovered deck, including adding supports required by the Building Department, without variances.

FINDINGS OF FACT: Riparian Conservancy Area Setback 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 the variance would allow the petitioner to screen and extend the roofline over an existing uncovered deck (180 sq ft), and add two additional supports as required by the Building Department;
- The disturbance will be limited to two additional supports for the deck;
- The site gains access via S Lori LN;
- The home and deck were constructed in 1973;
- The home and the deck are located within the riparian conservancy area and non-buildable area. Any changes to the home footprint, including the deck, requires three variances;
- The septic system is located to the east of the home in the buildable area;
- Since the uncovered deck is pre-existing, the disturbance required to add additional supports to screen in the porch is minimal;
- The screening in of the deck will not result in vegetation disturbance;
- 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:

- S Lori Lane is a Local Road maintained by the County Highway Department;
- The septic system is on the east side of the home and therefore will not interfere with the proposed screened in deck;
- 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 screened in deck meets setbacks from all property lines;
- Since the deck and home were built before the requirements for the setback from riparian areas, any change to the structure in the future will require variances. This variance is only applicable to the screening in of the existing uncovered deck;
- 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;
- The screening in of the existing uncovered deck will create more impermeable area since the change will include a roofline extension;
- The existing uncovered deck is 180 square feet. The change in the runoff will be minimal;
- The two supports to be added for the covered deck will be near the existing supports placed in concrete and covered by a brick patio;
- There is no FEMA floodplain on the site;
- Conclusion: It would not promote conditions detrimental to the use and enjoyment of other properties in the area.

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

Findings:

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

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

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Findings:

- The deck is pre-existing and will only change the total footprint by two additional supports, which requires three variances;
- There is a hardship in that the property owner cannot do any further maintenance of the pre-existing uncovered deck, including adding supports required by the Building Department, without variances.

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-12, 1902-VAR-13 & 1902-VAR-14 – Lippke

Kaczmarczyk: Thank you Jackie. Any questions?

Guerrettaz: What are the variances for the slopes? Can you explain that to me Jackie? What requires them to have a variance? Because they are not disturbing the slopes.

Nester: The way we measure slopes using this lidar map as well as measuring over a 50' foot distance, so they are triggering the slope over that 50' foot distance. We have to issue an Improvement Location Permit and we can't do that because they are located already in a steep area and close to the Riparian Conservancy. They are triggering the 15 and the 18 percent. Because this area is over 25 percent slope. Because of the way the contours are so close to each other and the uncovered deck there is already kind of at the tipping point before you get into more steep slope area. I don't know if I answered your question.

Wilson: But any disturbance is prohibited in the Environmental Constraints Overlay and soil disturbance.

Nester: If it's over the 18 percent slope. The petitioner could have brought to us a survey which marked out the exact sloped areas where it is buildable and non-buildable. But because of the expense of that and this project, we thought it would be better just to go through the variance process for the purposes of enclosing this deck.

Kaczmarczyk: Thank you Jackie. Anything further? Any other questions? Alright, we will move along. Is the petitioner or the petitioner's representative here and would they like to address us?

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**PETITIONER/PETITIONER'S REPRESENTATIVE –
1902-VAR-12, 1902-VAR-13 & 1902-VAR-14 – Lippke**

Kaczmarczyk: Step on up and sign in. If you could raise your right hand and state your name.

Lippke: Richard Lippke.

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

Lippke: Yes, I do.

Kaczmarczyk: Thank you, please proceed.

Lippke: I don't have much to add to what she said. It is sort of a smallish project in the sense that I am just using the existing deck and trying to enclose it. The stream down below floods all of the time because the culvert under Lori Lane is partially collapsed. So when it rains I get a lot of water. I get a swamp down below me and so you get a lot of mosquitos. So the deck is kind of unusable in the summer unless you want to spray Off all over yourself. I am just pretty much putting up sides, a roof, a little skylights to preserve the light that comes in the house. Because I have lots of trees when the trees are out so I don't get a lot of light. But I am not extending the deck. I am not changing anything beside that and yeah the supports do come down. I guess I didn't notice when I talked to Jackie but I went out there and looked at it. There is 12 inches of concrete that somebody poured at some point underneath the brick that is kind of on top. The brick is not in great shape but the concrete is 12 inches thick that somebody poured a lot of concrete down there. That is fairly flat so the supports are going to come down to that. But it does drop off very quickly after that as they said down to the stream area. But, yeah, I don't have much to add beyond that.

Kaczmarczyk: Thank you sir. That is fine. Any questions for Mr. Lippke? Ok, I think we are good. Thank you sir. Is there anyone here to speak in support of this petition? Anyone who wishes to speak in opposition? Seeing none. I will entertain a motion or further discussion.

SUPPORTERS – 1902-VAR-12, 1902-VAR-13 & 1902-VAR-14 – Lippke: None

FURTHER SUPPORTERS – 1902-VAR-12, 1902-VAR-13 & 1902-VAR-14 – Lippke: None

REMONSTRATORS – 1902-VAR-12, 1902-VAR-13 & 1902-VAR-14 – Lippke: None

**ADDITIONAL QUESTIONS FOR STAFF –
1902-VAR-12, 1902-VAR-13 & 1902-VAR-14 – Lippke: None**

**FURTHER QUESTIONS FOR STAFF –
1902-VAR-12, 1902-VAR-13 & 1902-VAR-14 – Lippke**

McNeil: I have a motion.

Kaczmarczyk: Yes, sir.

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McNeil: On case number 1902-VAR-12, 1902-VAR-13 and 1902-VAR-14, for the Buildable Area, ECO Area 3 and Riparian Conservancy Area variance respectively, I move that we approval all 3 variances in 1 vote, based upon the findings of fact.

Kaczmarczyk: I will **second**. In lieu of more discussion, Larry can you call the roll?

Wilson: The vote is on petition number 1902-VAR-12, 1902-VAR-13 and 1902-VAR-14, all 3 development standards variances in regard to the Lippke Buildable Area, ECO Area 3 and Riparian Conservancy Area setbacks. A vote in favor is a vote to grant the variances based upon the findings. Peter Kaczmarczyk?

Kaczmarczyk: Yes.

Wilson: Michael McNeil?

McNeil: Yes.

Wilson: Mark Kruzan?

Kruzan: Yes.

Wilson: Margaret Clements?

Clements: Yes.

Wilson: Bernie Guerrettaz?

Guerrettaz: Yes.

Wilson: Variances are granted 5 to 0.

The motion in cases 1902-VAR-12 - Lippke Buildable Area Variance to Chapter 804, 1902-VAR-13 - Lippke ECO Area 3 18% Slope Variance to Chapter 825 and 1902-VAR-14 - Lippke Riparian Conservancy Area Variance to Chapter 825, in favor of approving all 3 variances, carried unanimously (5-0).

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BZA CHAIR NOMINATIONS

Kaczmarczyk: As I mentioned at the beginning of the meeting before Mark arrived, I will do this before we get to reports, we are required by our bylaws to name a Chair and a Vice Chair each year and we have not done that this calendar year. So to that end, I am going to **nominate myself for Vice Chair.**

Clement: Oh, that is a clever...

Kaczmarczyk: You left me in charge, I get to do that.

Kruzan: I don't hear a second.

McNeil: **I nominate you (Peter Kaczmarczyk) as Chair.** Anyone want to second that?

Kaczmarczyk: It sounds like it is dying for lack of a second.

Clements: I **second** Michael McNeil's suggestion that you be elected and nominated to Chair.

Kaczmarczyk: I tried. You have got a motion and a second. I think we can do a voice vote. All in favor of me remaining Chair for the calendar year please say "aye".

Kruzan: Aye.

Guerrettaz: Aye.

Clements: Aye.

Kaczmarczyk: Aye.

McNeil: Aye.

The motion to elect Peter Kaczmarczyk as Chair of the BZA for the calendar year, carried unanimously (5-0).

Kaczmarczyk: Everyone said aye. Does anyone wish to be Vice Chair? It is a tough job. You show up. You do nothing. **I am going to nominate Michael McNeil as Vice Chair.**

Clements: **Second.**

Kaczmarczyk: We have a motion and a second. All in favor of Michael McNeil being Vice Chair, please say "aye".

Kruzan: Aye.

Guerrettaz: Aye.

Clements: Aye.

Kaczmarczyk: Aye.

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McNeil: Aye.

Kaczmarczyk: All opposed? We have a Vice Chair for 2019.

The motion to elect Michael McNeil as Vice Chair of the BZA for the calendar year, carried unanimously (5-0).

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REPORTS:

Planning/Wilson: I would like to introduce our newest staff members for the Planning Department. This is their first public meeting that is televised by CATS. First is Anne Crecelius who is an undergraduate from IU and her Master's Degree is in GIS from the University of Waterloo in Ontario. Our other new planner is Drew Myers who is an undergraduate from IU and has a double Master's from SPEA MSES and MPA.

Clements: Welcome.

Wilson: Both of them are Hoosiers and both of them have started and are doing a great job already.

Clements: Excellent.

Kaczmarczyk: Very glad to have you on board. Anything else, Larry?

Wilson: That is all that I have.

Guerrettaz: I have got a question. Tammy, you have got 3 scouts back there. Are they working on their Citizenship in the Nation?

Behrman: Just in the Citizenship in the Community.

Guerrettaz: In the community. Maybe they could come up and tell us what they are doing here this evening. Give them a chance to get in front of the microphone.

Kruzan: I would like to nominate them to Chair of these meetings.

Kaczmarczyk: I was thinking the same thing. Duty calls.

Gratz: We are Boy Scouts and we are trying to get our Eagle required.

Guerrettaz: Could you introduce yourself first?

Gratz: I am Silas Gratz.

Hendrix-Petry: Jasper Hendrix-Petry.

Behrman: I am Oscar Behrman.

Gratz: We are trying to get eagle required badges so we can advance to be Eagle Scouts. So we are working on Citizenship of the Community and we had to attend this.

Behrman: We are all First Class and we are trying to get to Star Scouts.

Kaczmarczyk: Excellent. Would you like to be sworn in so we grill you about something?

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Kruzan: I want to know who was making you laugh. I want to know who it was that started it.

Gratz: It was Jasper.

Clements: What do you have to do to get the badge for Citizenship of the Nation?

Hendrix-Petry: We just do research about international politics and stuff like that.

Guerrettaz: What about community?

Hendrix-Petry: Community, we have to go to this meeting and learn about like community service we could do and perform like 8 service hours.

Gratz: We have to have like 8 service hours. We have been working at the Community Kitchen and stuff.

Clements: That is great.

Guerrettaz: Are you keeping up with your paperwork?

Hendrix-Petry: Yeah, we had a meeting Monday and we did some of it and we are finishing up tonight.

Behrman: We are going to a badge camp this weekend to actually finish these badges and actually get them.

Kruzan: How old are you guys?

Behrman: I am 13.

Hendrix-Petry: I am 15.

Gratz: I am 14.

Clements: Thank you for coming tonight.

Wilson: I will note that our new planner, Drew Myers is an Eagle Scout.

Legal/Schilling: No report

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The meeting adjourned at 6:42 P.M.

Sign:

Attest:

Peter Kacmarczyk, Chairman

Larry J. Wilson, Secretary

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