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**BOARD OF ZONING APPEALS
Regular Meeting Minutes
May 1, 2019 - 5:30 p.m.**

CALL TO ORDER

ROLL CALL

INTRODUCTION OF EVIDENCE

APPROVAL OF AGENDA

APPROVAL OF MINUTES

January 2, 2019

April 3, 2019

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

ROLL CALL: Michael McNeil, Peter Kaczmarczyk, Bernie Guerrettaz, Margaret Clements

ABSENT: Mark Kruzan

STAFF PRESENT: Larry Wilson, Director, Tammy Behrman, Planner/GIS Specialist, Drew Myers, 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, to allow time for review by board members, carried unanimously.

Motion to approve minutes of April 3, 2019 as presented, carried unanimously.

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DISCUSSION ON MINUTES APPROVAL PROCEDURE

Wilson: We have the January minutes kicking around for a little while, so I did a little research. There is nothing in our statute or in our rules of procedure or ordinances which require a member to be present to vote on the minutes. That is also the rule of Roberts Rule of Order which we do not follow but its guidance. The basic rule is that you can vote on them whether you were there or not because you are not voting on attendance, you are voting on the accuracy and the reliability of the minutes and any grammatical errors and inconsistencies and so on. So, typically and I am going to suggest that we start doing, I have talked to Peter about this already, will be just to say are there any corrections or additions to the minutes and if not the Chairman would say, the minutes stand approved as submitted. If there are corrections or additional, it would be the minutes stand approved as corrected or amended. I think that will speed us along and that will eliminate the problem of having back logs of minutes from months and months. But we are obligated to have those in a final form in case someone wants to appeal or wants to look at the record. So, that will take care of that problem.

Schilling: My recollection of the case law is that they expect you to have at least listened to the tapes or viewed them so that you can say that they are accurate or not.

Kaczmarczyk: That certainly makes sense. Now, should we go ahead and try to do the January minutes. I will tell you I have not reviewed them and I was not here. So, should be perhaps what on them? I know we want to get them done but it sounds to me like we should probably post-pone them if we are also supposed to review them. Bernie, you weren't here in January either, I assume. Only one of us was.

Wilson: We will send them out before the next meeting. We will send them out to everybody before the next meeting. I will also note for you and for the general public that these meetings are on CATS achieve and you can watch any meeting in its entirety, even repeatedly if you want to.

Kaczmarczyk: I have done that. It's a lot of fun. Alright, so the January minutes we will all get an opportunity to review before the next meeting.

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OLD BUSINESS:

NEW BUSINESS:

- 1. 1903-VAR-15** **Phelps Condition #1 Table 33-2 for Crops and Pasturage Variance to Chapter 833**
One (1) 0.37 +/- acre parcel in Perry Township, Section 1 at 4919 E Cedar Crest DR. **Zoned RE2.5/ECO3.**

- 2. 1904-VAR-16a** **Hawkins DADU Special Cond #53 & #55 Variance to Chapter 802**
- 3. 1904-VAR-16b** **Hawkins Minimum Lot Size Variance to Chapter 804**
One (1) 1.57 +/- acre parcel in Salt Creek Township, Section 18 at 3267 S Knightridge RD. **Zoned CR/ECO3.**

- 4. 1904-VAR-17** **Greg Young Surfacing Requirement Variance to Chapter 806**
- 5. 1904-VAR-18** **Greg Young Parking Lot Landscaping Requirement Variance to Chapter 830**
One (1) 17.8 +/- acre parcel in Perry Township, Section 29 at 5200 S Production DR. **Zoned HI.**

- 6. 1904-VAR-19** **Hendrix Minimum Lot Size Variance to Chapter 804**
- 7. 1904-VAR-20** **Hendrix Minimum Lot Width Variance to Chapter 804**
One (1) 0.61 +/- acre parcel in Bean Blossom Township, Section 29 at 7964 N Stinesville RD. **Zoned AG/RR**

- 8. 1904-VAR-21** **Schroeder Front Yard Setback Variance to Cedar Springs PUD**
- 9. 1904-VAR-24** **(Ordinance #2008-17)**
Schroeder Buildable Area Variance to Chapter 804
One (1) 0.32 +/- acre parcel in Perry Township, Section 1 at 4677 E Cache Creek Lane. **Zoned PUD/ECO3.**

- 10. 1904-VAR-22** **Beargie Front Yard Setback Variance to Chapter 804**
- 11. 1904-VAR-23** **Beargie Minimum Lot Size Variance to Chapter 804**
One (1) .92 +/- acre parcel in Washington Township, Section 16 at 505 E Chambers Pike. **Zoned AG/RR.**

REPORTS:

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

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NEW BUSINESS

1. 1903-VAR-15 Phelps Condition #1 Table 33-2 for Crops and Pasturage Variance to Chapter 833

One (1) 0.37 +/- acre parcel in Perry Township, Section 1 at 4919 E Cedar Crest DR. **Zoned RE2.5/ECO3.**

BOARD ACTION: Kaczmarczyk introduced the petition.

STAFF ACTION:

Behrman: This property is located at 4919 East Cedar Crest Drive and that is in Perry Township. It is zoned Estate Residential 2.5 and the minimum lot size is normally 2.5 acres. This lot is 0.37 acres. It is also in the Environmental Constraints Overlay for Lake Monroe Area 3. The Comprehensive Plan designates it as Rural Residential.

McNeil: Excuse me. Can we do something with the acoustics?

Behrman: Is it that you couldn't hear me? Is it better if I move it forward?

McNeil: Between your voice and the reproduction of your voice by the time it gets to me it's rah...rah...rah...

Behrman: Ok.

Kaczmarczyk: There is an echo again tonight that we had never had a problem with until last month.

Behrman: I had to listen to myself for the Plan Commission and it was really hard. There was a hum on the audio, on CATS too. I don't know. We will have to maybe talk with CATS to see if we can calibrate or something after this meeting.

Kaczmarczyk: Alright, well, I guess there may be a perfect point from the microphone, whatever that is.

Behrman: I moved the microphone closer. Did that help at all or do you want it farther away?

McNeil: I guess I would like to hear what you have got to say either through the microphone or from your voice and when it's coming at me from both and one of them is delayed and one of them is not.

Behrman: I will try to do it through the microphone. I did just move it closer.

McNeil: Is there something new about what's been done with the acoustics? Because this didn't used to happen.

Behrman: Will you turn that microphone off? What if I use yours? I don't even think that one is working. Is it?

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Kaczmarczyk: We will get down to business here shortly, folks.

McNeil: Is this working?

Wilson: Testing, testing, can you hear that?

McNeil: I will just do the best I can with my old man ears.

Behrman: Ok, can you hear this one? I can't hardly hear myself in this one at all. Hopefully, Barb can hear this for the minutes. Ok, where was I? Ok, we are at site conditions at this point. This lot is 0.37 acres and in Chapter 833, the chapter that kind of rules over the former Fringe of the City of Bloomington zoning, there is a Special Condition that you cannot have livestock on RE2.5 acre lot, unless you have a 2 acre lot size. The petitioner is here because they desire to have 4 chickens and they are asking for a variance from this Condition #1 regarding Minimum Lot Size. The lot is fairly flat. Most of the slopes are under 12 percent. These are a few of the site photos. The bottom photo is the back yard area where they have their gardens. They would be putting their coop right up next to the home and I think incorporate it right next to the gardens there. These are a few of the other photos from the site. Here is a pictometry view of the area. I also put a fox in my presentation because on a site visit I literally saw a fox while I was in the neighborhood and I thought it was very ironic because we are here for a variance to have chickens. So, guard against the fox. This is Condition #1 from Chapter 833 highlighted there and in the packet is where it describes how we calculate the density of animals allowed on a lot. For fowl you are allowed to have 0.2 animal units per acre and in this case you would be allowed to have 10 on a 2 acre lot. The petitioner is asking for 4 and I have enclosed the petitioner's letter, their site plan that shows that they are meeting the required setbacks from the side and rear yard for the chicken coop and then this is the design. Which is different from what you see in your packet. The one in the packet is a different design than what the petitioner is actually going to be using and also a drawing of what the run will be like. It is a 7' by 7' run that the chickens can kind of be in. I also included in the packet the City of Bloomington's rules and regulations for owning a flock, which can be I believe up to 5 chickens or actually 5 hens, no roosters. If the petitioner had this 0.37 acre lot in the City of Bloomington, they would not be asking for a Minimum Lot Size Variance for being able to have chickens. We are using an outdated ordinance that was pre 1997 that was before the urban chicken movement kind of came into being. With that, staff is recommending approval for the Design Standards Variance Chapter 833 for Condition #1 for Number of Accessory Livestock in Pasturage Context, based on the findings of fact. Any questions?

RECOMMENDED MOTION:

Staff recommends **approval** for Design Standards Variance, Chapter 833 --Condition 1, Number of Accessory Livestock in a Pasturage Context based on the findings of fact.

Chapter 833 Special Condition #1 Accessory Livestock in excess of the (allowed) densities in a pasturage context and requires the approval of a variance.

FINDINGS OF FACT:

Standards for Design Standards Variance Approval: In order to approve an application for a

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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 petitioner requests the ability to have four (4) hens on their property;
- The petitioner has 0.38 +/- acres of land in an unplatted subdivision;
- The zoning, Estate Residential 2.5 (RE2.5) does allow for livestock under crops and pasturage;
- Condition 1 for allowing livestock under “Crops and Pasturage” says that “Livestock shall not be kept on any parcel of less than five (5) acres in area and 300 feet in width, except that chickens and ducks may be kept within the density limits on parcels of two (2) acres or more.”
- The petition site is not in sight of a scenic or natural area;
- Conclusion: Approval of the variance would not impair the stability of a natural or scenic area.

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

Findings:

- The accessory livestock would need to meet extended setbacks;
- The parcel is on septic;
- The petition site is on a local road;
- Conclusion: Approval of the variance would not interfere with or make more dangerous, difficult, or costly, the use, installation, or maintenance of existing or planned transportation and utility facilities;

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

Findings:

- See Findings A (1) & (2);
- Accessory livestock is a permitted use. The number of livestock permitted is tied to the amount of pasturage a property owner has, not the zone;
- The property owner does not meet the 2 acre minimum requirement for pasturage;
- The special condition would allow for 10 chickens on the required 2 acres of pasturage;
- The request is for 4 hens on less than 0.1 acres;

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- The City of Bloomington has permits to allow up to five hens and it does not require a minimum lot size (Exhibit 3);
- The Chapter 833 definitions and special conditions were drafted prior to 1997 by the City of Bloomington and managed as the Fringe;
- The Comprehensive Plan has this area as Rural Residential;
- Conclusion: Approval of the variance would not alter the character of the property in a manner that substantially departs from the characteristics sought to be achieved and maintained with the relevant zoning district;

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

Findings:

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

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

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

Findings:

- The proposed chicken coop would not require a permit due to size of less than 20 sf;
- The height of the coop is approximately 3 feet;
- Hens do not typically crow but do make clucking and scratching sounds;
- Conclusion: Approval of the variance would satisfy the design standard for density 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:

- The petitioner is in the Environmental Constraints Overlay Area 3 but does not have any regulated slopes;
- The petition site drains to the south towards the road;
- Conclusion: There would not be foreseeable detrimental conditions to the use and enjoyment of other properties;

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

Findings:

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- 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 petitioner has no other way of keeping or raising chickens other than asking for this variance or moving;
- The Former Fringe zoning Chapter 833 was written prior to 1997 which was before urban chicken use was becoming a popular. The City of Bloomington has adopted chicken regulations to allow the use under specific condition of which minimum lot size is not one;

QUESTIONS FOR STAFF – 1903-VAR-15 – Phelps

Kaczmarczyk: Thank you. Any questions? Ok, no questions for staff. Would the petitioner or the petitioner’s representative like to address the Board this evening? It is certainly not required. We will need to swear you in up here.

PETITIONER/PETITIONER’S REPRESENTATIVE – 1903-VAR-15 – Phelps

Kaczmarczyk: Hopefully there is a piece of paper and a pen there. Just sign your name. One second. Can you raise your right hand? State your name.

Phelps: I am Deb Phelps.

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

Phelps: Absolutely, yes.

Kaczmarczyk: Thank you. Now, please proceed.

Phelps: I just wanted to say that I appreciated you putting the Bloomington City variance. Because our neighborhood is actually under consideration to be annexed and so I am very much into meeting these requirements now. If we are in an annex it will be appropriate for, there won’t be any changes that will have to be made. The other thing is that we know about the fox. We also have foxes and we have hawks. We have seen coyotes and it some of the wonderful things of our wonderful neighborhood. But because of that the run, the coup is going to be in the run and the run itself is going to be covered, top, sides and also 12” inches down. So, I am going to try to make it as safe as possible. That is all that I wanted to say.

Kaczmarczyk: Thank you. Anyone have any questions for Ms. Phelps? Alright, no questions. Thank you very much. Is there anyone here tonight that would like to speak in favor of this

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petition? Come on up.

SUPPORTERS – 1903-VAR-15 – Phelps

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

Welber: Beverly Welber.

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

Welber: I do.

Kaczmarczyk: Thank you. Please proceed.

Welber: My name is Beverly Welber and I live in the property next to Deb's, which you have seen our house in several of these photographs. We are the one immediately to her right. I am here to speak in support of Deb's request to have these chickens. When we first moved here I noticed that she was out doing some clearing on her lot and that she might benefit from a particular tool that we had. So, I suggested that my husband loan it to her and several hours later I got an email saying thank you for the use of the tool. I have washed it. I have sterilized it and I have put it back in your garage. SO, at that point I knew that any project that she might embark on with respect to doing work outside would be done with utmost responsibility and consideration for her neighbors. So, we are very happy to have this prospect of having some chickens next door and hope that you will support Deb's petition. Thank you.

Kaczmarczyk: Thank you. Anyone have any questions? Alright, thank you. Is there anyone else here who would like to speak in favor of this petition? Is there anyone here who would like to speak in opposition to this petition? Seeing none. I will entertain discussion or a motion.

FURTHER SUPPORTERS – 1903-VAR-15 – Phelps: None

REMONSTRATORS – 1903-VAR-15 – Phelps: None

ADDITIONAL QUESTIONS FOR STAFF – 1903-VAR-15 – Phelps: None

FURTHER QUESTIONS FOR STAFF – 1903-VAR-15 – Phelps

Clements: **The matter of case number 1903-VAR-15, I move that we approve the exception based on the findings of fact.**

McNeil: **Second.**

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

Wilson: The vote is on petition 1903-VAR-15, Phelps Variance from the Condition #, Table 33-2, to allow chickens on an undersized lot. A vote in favor is a vote to grant the variance. Margaret

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Clements?

Clements: Yes.

Wilson: Bernie Guerrettaz?

Guerrettaz: Yes.

Wilson: Peter Kaczmarczyk?

Kaczmarczyk: Yes.

Wilson: Michael McNeil?

McNeil: Yes.

Wilson: 4 to 0, variance is granted.

The motion in case 1903-VAR-15, Phelps Condition #1 Table 33-2 for Crops and Pasturage Variance to Chapter 833, in favor of approving the variance, carried unanimously (4-0).

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NEW BUSINESS

2. 1904-VAR-16a Hawkins DADU Special Cond #53 & #55 Variance to Chapter 802

3. 1904-VAR-16b Hawkins Minimum Lot Size Variance to Chapter 804

One (1) 1.57 +/- acre parcel in Salt Creek Township, Section 18 at 3267 S Knightridge RD. **Zoned CR/ECO3.-**

BOARD ACTION: Kaczmarczyk introduced the petition.

STAFF ACTION:

Behrman: This one is located at 3267 South Knightridge Road and it is zoned Conservation Residential, which requires a 2.5 acre lot size to develop. It is also in the Environmental Constraints Overlay Area 3 for Lake Monroe. Rural Residential is the Comp. Plan designation. This is the site at this point and time. The site currently has a home on it, which has the brown roof and then there is a temporary mobile home on the site, which is the white rectangle right in the middle of the parcel. That mobile home was permitted in 2005 first and then it went and had to get BZA approval annually and be re-permitted annually to maintain that temporary status. At that point, we had an oversight. We had some staff change over and this parcel kind of fell through the cracks and wasn't maintaining that permit. They basically came in with a Building Permit to add an ADA ramp to the mobile home and that triggered a review of the site. That is when we realized that we had a noncompliant structure. I took the file and read through, I don't know how many hours of minutes from all of those meetings. They came to several meetings and so we had a lot of testimony. But I realized from 2011 when it was last expired, we had ordinance language that was approved in 2015 that would allow for Accessory Dwelling Unit. I started going through all of the requirements for the Accessory Dwelling Unit and realized that this would fit with the exception of needing the Minimum Lot Size Variance. That is why we are here. Up at the top there is the lot and it is completely 12 percent slopes. It is a very flat lot. These are some of the photos from the site. The bottom right photo there is the mobile home on the right side, the white structure that was requiring an ADA ramp be added to it. These are just a couple of the other structures on the property, the carport that is attached to the main home and then the some of the storage buildings that they have there. Those all do have permits or are grandfathered in. This is an aerial view of the site. Williams Brothers has graciously been working with us to help them get through the BZA process and the permitting process. The letter on the left is their letter to the Board of Zoning Appeals and the consent that was given and on the right hand side is the map of the ramp that they are adding. I included this slide because there is a small change. In order to have an Accessory Dwelling Unit....

Kaczmarczyk: Just one second, Tammy, if I could. Ma'am, you are obviously having trouble hearing. You are certainly welcome to sit up closer if you think that will help you and anywhere up here is just fine. I don't know if that will make it any better. But we can hope.

Behrman: I realize that in my report I am referring to Special Condition #55, which was in there and I have it underlined on the slide. It is the minimum lot size has to be 5 acres to have an Accessory Dwelling Unit. Also thought it pops up in Special Condition #53, so we are really going to need a variance from both Special Conditions both #53 and #55 to get around that 5 acre to allow that Accessory Dwelling Unit, basically this temporary mobile home to be converted and permitted under the Accessory Dwelling Unit. In addition, we are just going to go ahead and get a Minimum Lot Size Variance from Chapter 804 standards for the Conservation Residential that

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requires 2 and half acres. Because they have 1.87. I think that rather than it being before it was a kind of chronic process of them coming to the Board every year and going through that expense and time, they are already experiencing a hardship. This seems to be a permanent solution to them allowing that structure to stay on site indefinitely at this point. With that, staff recommends approval for the Design Standards Variance to Chapter 802, Conditions #53 and #55, from the 5 Acre Minimum Lot Size Requirement for a Detached Accessory Dwelling Unit, based on the findings of fact and also to approve the Design Standards Variance to Chapter 804, Minimum Lot Size Requirements, based on the finds of fact. Any questions?

RECOMMENDED MOTIONS

Approve the design standards variance to Chapter 802, Condition #55 from the 5 acre minimum lot size requirement for a Detached Accessory Dwelling Unit based on the findings of fact.

Approve the design standards variance to Chapter 804 minimum lot size requirement based on the findings of fact

FINDINGS OF FACT: Petition 1904-VAR-16a; A Detached Accessory Dwelling Unit requires a 5 acre lot size.

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 convert a temporary mobile home placement for hardship to a Detached Accessory Dwelling Unit (DADU);
- The site currently contains a single family dwelling with an attached carport, four sheds and the temporary mobile home;
- The site is adjacent to single family residential uses;
- The site is in an Environmental Constraints Overlay Area 3 but all slopes are less than 12%;
- The site has no FEMA floodplain on the lot;
- The site is not in a natural or scenic area;
- Conclusion: The approval would not impair the stability of a natural or scenic area;

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

Findings:

- See findings under A(1);

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- The parcel is located off of S Knightridge Road, a Local Road and utilizes a shared driveway;
- There are two septic systems on the property, one per residence;
- 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);
- Temporary mobile home was first permitted in 2005 and has a Certificate of Occupancy;
- The petition site is zoned Conservation Residential (CR);
- The 1.57 +/- acre parcel is a legal lot of record;
- A DADU is permitted in the Conservation Residential (CR) zone if the property has at least 5 acres;
- Temporary mobile home meets Improvement Location Permit requirements and all other design standards for the conversion to a DADU;
- Conclusion: The character of the property included in the variance would not be altered in a manner that substantially departs from the characteristics sought to be achieved and maintained within the relevant zoning district;

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

Findings:

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

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

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

Findings:

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

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

Findings:

- See findings under A(1);
- There is no floodplain on site;
- Drainage is to the northeast;
- 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 temporary mobile home is an existing structure that has been in place since 2005;
- If the variance for the 5 acre minimum lot requirement for a DADU is not granted the petitioner would need to request annual BZA approval to allow the Temporary mobile home to obtain an updated permit;
- The petitioner's family is already facing a hardship which originally allowed for the mobile home placement;

FINDINGS OF FACT: Minimum Lot Size Standard 1904-VAR-16b

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 980 sf mobile home to remain on site and add an accessible ramp to the structure;
- The Temporary Mobile Home was first permitted in 2005 and obtained permits until

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2010 until staff oversight let the permit lapse;

- The petition site is zoned Conservation Residential (CR) and located within the Environmental Constraints Overlay Area 3 (ECO3);
- The parcel is 1.57 +/- acres;
- The minimum lot size in Conservation Residential (CR) is 2.5 acres;
- There is no known karst on the property;
- There is no evidence that the building would obstruct a natural or scenic view;
- There are other parcels nearby that are under 2.50 acres in size;
- Conclusion: It would not impair the stability of a natural or scenic area;

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

Findings:

- See findings under A(1);
- The parcel is located off of S Knightridge Road, a Local Road and utilizes a shared driveway;
- There are two septic systems on the property, one per residence;
- Conclusion: It would not interfere with or make more dangerous, difficult, or costly, the use, installation, or maintenance of existing or planned transportation and utility facilities;

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

Findings:

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

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

Findings:

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

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

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

Findings:

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

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

Findings:

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

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

Findings:

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

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

Findings:

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

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

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QUESTIONS FOR STAFF – 1904-VAR-16a & 1904-VAR-16b - Hawkins

Kaczmarczyk: Thank you Tammy and just very quickly, ma'am, I just wanted to let you know if you want you can even sit up in the front rows if that would help. I just want to make sure you are ok. Anyone have any questions for Tammy?

Guerrettaz: Would the extension of this variance for the accessory dwelling unit (Inaudible)

Behrman: There will be a requirement that an affidavit be put on file with the Accessory Dwelling Unit Permit that the owner of the property lives in either the main structure or the Accessory Dwelling Unit and that would then get handed down for whoever owns the property. It has to be owner occupied in one of those structures. I will be sending a letter and clarifying any and all requirements that are needed.

Kaczmarczyk: Any other questions for staff? Alright, seeing none. Would the petitioner or the petitioner's representative like to address the Board this evening? Ok, not required. Is there anyone here tonight who would like to speak in opposition to this petitioner, or in favor, I am sorry. Yes, you are right. I was out of sequence. Come one up.

**PETITIONER/PETITIONER'S REPRESENTATIVE –
1904-VAR-16a & 1904-VAR-16b - Hawkins 1902-VAR-11 – Gregory: None**

SUPPORTERS – 1904-VAR-16a & 1904-VAR-16b – Hawkins

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

Doherty: My name is Rosemary Doherty.

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

Doherty: I do.

Kaczmarczyk: Thank you. Please proceed.

Doherty: I am Area 10 Agency on Aging, their manager for the individual who is needing the ADA wheelchair ramp. So, I strongly support this motion and I also wanted to ask if there is any possibly of for future situations that a wheelchair ramp for the purpose of accessibility for someone with a disability could somehow be fast tracked through this process. The ramp funding was approved in November and I had no idea what this process would be like and so that is just a question I wanted to put before the Board. Thank you.

Kaczmarczyk: I have a feeling that is more of a question for staff and this is currently how the procedure works.

Behrman: When we get a permit in we review the site to make sure that it is complaint and this site just picked up that it was not. So we had to make the site complaint before we could issue the

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permit. And we have been looking, well, Larry has been looking at a way to fast track. To make something accessible shouldn't really have to, well, there is a waiver that you are looking.

Wilson: We are under obligation to make a reasonable accommodation under the ADA for individuals who have disabilities or have an illness or something like that. However, in this case the problem was not, we would have issued a permit for the walkway but the lot cannot be further developed under our zoning ordinance without getting a variance because of the Minimum Lot Size. Secondly, the dwelling to which the ramp would attach was not legal under our ordinance. It was not an approved dwelling. So we had 2 complications there that this variance is attempting to remedy. But there is not a problem with issuing the permit for a ramp. What we look at with the ramp and typically we will issue those unless there is some safety problem with it, sometimes the designs if they are homemade have a tendency to empty out onto a street or something like. Or they are too steep and they don't meet the requirements for that. Those are things that we look at. But we make every effort to get somebody through the process as quickly as possible if they are under a disability.

Kaczmarczyk: I think it would be fair to say that this would not a typical procedure and any typical one it would go quicker and I certainly sure they are doing the best they can. But it is a legitimate concern. Thank you. Anyone have any questions for Ms. Doherty? Alright, you are good. Is there anyone else here who would like to speak in favor of this petition? Seeing none. Anyone here who would like to speak in opposition to this petition? Seeing none. I will entertain discussion or a motion.

FURTHER SUPPORTERS – 1904-VAR-16a & 1904-VAR-16b – Hawkins: None

REMONSTRATORS – 1904-VAR-16a & 1904-VAR-16b – Hawkins: None

**ADDITIONAL QUESTIONS FOR STAFF –
1904-VAR-16a & 1904-VAR-16b – Hawkins: None**

FURTHER QUESTIONS FOR STAFF - 1904-VAR-16a & 1904-VAR-16b – Hawkins

McNeil: I have a motion.

Kaczmarczyk: Alrighty, Michael.

McNeil: **In case number 1904-VAR-16a and 1904-VAR-16b, Design Standards Variance under Chapter 802 and 804, I move that we approve both variances, based upon the findings of fact.**

Clements: I **second** the motion.

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

Wilson: I am sorry, are you just doing the one or both?

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Kaczmarczyk: Both.

Wilson: I am having a hard time hearing too. We will have to talk to Tech Services about this.

Guerrettaz: One question thought. Do we need to include the standard for #53 as well since we have it for Condition 55?

Wilson: I will put that in when I re-read it. The motion is to approve 2 variances. The vote is on following variances 1904-var-16a, Hawkins Detached Accessory Dwelling Unit Variance from Condition #53 and #55. The motion is to approve based upon the findings. The second is to approve the Minimum Lot Size Variance under petition 1904-VAR-16b, based upon the findings. A vote in favor is a vote to grant both variances. Bernie Guerrettaz?

Guerrettaz: Yes.

Wilson: Peter Kaczmarczyk?

Kaczmarczyk: Yes.

Wilson: Michael McNeil?

McNeil: Yes.

Wilson: Margaret Clements?

Clements: Yes.

Wilson: Both variances are granted.

The motion in cases 1904-VAR-16a, Hawkins DADU Special Cond #53 & #55 Variance to Chapter 802, and 1904-VAR-16b, Hawkins Minimum Lot Size Variance to Chapter 804, in favor of approving the variances, carried unanimously (4-0).

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NEW BUSINESS

- 4. 1904-VAR-17** **Greg Young Surfacing Requirement Variance to Chapter 806**
- 5. 1904-VAR-18** **Greg Young Parking Lot Landscaping Requirement Variance to Chapter 830**
One (1) 17.8 +/- acre parcel in Perry Township, Section 29 at 5200 S Production DR. **Zoned HI.**

BOARD ACTION: Kaczmarczyk introduced the petition.

STAFF ACTION:

Wilson: Jackie Nester is out of the office this week so I am going to be covering the next few variances, so bear with me. These are not my cases but I will try to get through them the best I can. These are 2 variances, 1904-VAR-17 and 1904-VAR-18. The first one is a variance from the Surfacing Requirement under Chapter 806. The second one is a variance from the parking Lot Landscaping Requirement under Chapter 830. This is a one parcel of 17.8 acres in Perry Township, located at 5200 South Production Drive. The zoning is Heavy Industrial. As you can see, there is the location on the map and to give you a placement this is just north of the waste water treatment plant from the city and it is the last lot of the industrial development on Production Drive. Again, the zoning is Heavy Industrial. There is the lot that we are talking about. Under the plan it is shown as Employment. There is an aerial view of the property. There are some complications with the property and at some point there has been a lot of fill on that site, a lot of stones. They will be required to do a geological evaluation whenever they get to the construction phase of the site. There is the slope map. It is fairly level except for a couple of ravines. The variance is for under our requirements they are required to pave their parking lot to meet our standards and also to do some interior landscaping to create parking islands, so it's not just a huge sea of asphalt. The variance they are requesting is a variance from those requirements to allow gravel for the parking lot and to allow to waive the requirement to eliminate the requirement to have interior plantings. There is the letter requesting the variance. To summarize the request, the petitioner contends that the lot will basically be damaged and destroyed by the heavy truck traffic and that it will be difficult to place interior plantings due to the heavy truck traffic on this site. Our motion is deny the Design Standards Variance request from the Surfacing Requirement and also to deny the Design Standards request from the Interior Landscaping Requirement. We have other trucking terminals that have come in and met this requirement. It is not just a question of aesthetics. There is also issues as far as dust generation. Are basis is we would like to keep the standard consistent. Because we have trucking terminals all over from where we have heavy trucks going in and out and they are able to have parking lots. It is really a question of design and construction more than it is the inability of pavement to withstand the heavy trucks and equipment.

RECOMMENDED MOTIONS:

Deny the design standards variance request from the Surfacing Requirement of Chapter 806 based on the findings of fact.

Deny the design standards variance request from the Interior Landscaping Requirement of Chapter 830 based on the findings of fact.

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FINDINGS OF FACT: Surfacing Requirement Variance to Chapter 806

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

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

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

Findings:

- Approval of the variance would allow the petitioner to maintain a soft surface parking lot (compacted aggregate stone) of approximately 143,645 square feet (approximately 3.3 acres) for the first phase, and 12,553 square feet (approximately 0.29 acres) for the future phase. The gravel would be in place of the standard hard surface paving requirement per Chapter 806 of the Monroe County Zoning Ordinance;
- The petition site is not within the Environmental Constraints Overlay Area;
- The variance would waive the design standard requiring paved aisles and parking spaces as required by Chapter 806;
- The proposed development is on part of the property that is most suitable for construction;
- The petitioner will be submitting a geotechnical review prior to site plan submittal per the condition set forth in the preliminary plat approval;
- The driveway and circulation/parking area will be utilized by company vehicles associated with a Trucking Terminal use;
- The petitioner is constructing 15 parking spaces that are hard surface for employees/guests. Of the 15 hard surface parking spaces, 2 will be ADA accessible. Those spaces will allow the petitioner to meet ADA requirements;
- The proposed development meets required setbacks;
- The Highway Department can impose specific design requirements during formal site plan review, which is required prior to the site being occupied as a trucking terminal;
- Conclusion: It would not impair the stability of a natural or scenic area;

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

Findings:

- See Findings A(1);
- The site gains access from S Production Drive, a local road;
- The petitioner will build out a cul-de-sac off of Production Drive and gain access to the site via a paved driveway;
- The adjoining lots are large lots primarily consisting of industrial uses;
- The proposed development has no foreseeable negative impact on planned transportation facilities or utilities;
- Conclusion: It would not interfere with or make more dangerous, difficult, or costly, the

use, installation, or maintenance of existing or planned transportation and utility facilities;

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

Findings:

- See Findings A(1) and A(2);
- The development site is zoned Heavy Industrial (HI);
- Surrounding properties are zoned Heavy Industrial (HI), Light Industrial (LI) and Agriculture/Rural Reserve (AG/RR);
- If the variance request is approved, the petitioner will still be required to obtain site plan approval and meet development standards including Height, Bulk, Area and Density requirements for the HI Zoning District;
- The driveway and cul-de-sac off of S Production Drive will be paved;
- The adjacent industrial uses to the petition site within the Heavy Industrial (HI) Zoning District are paved, in addition to the majority of uses within the Robinson Industrial Park;
- 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;
- The petitioner submitted findings, including the following:

Due to the heavy traffic and parking of large trucks and equipment, the use of traditional asphalt or concrete material will result in excessive long-term maintenance issues. The majority of the requested lot will be screened with fencing (with opaque slats). The use of gravel as the pavement surface will also provide additional stormwater filtration. Gravel will act as a filter media for dirt, oils, and other contaminants traditionally found on parking surfaces. In particular, the trucks and equipment to be stored on this lot will have more dirt/dust/mud than personal vehicles due to the nature of operations.

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

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

Findings:

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

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

Findings:

- See findings under (A);
- Conclusion: It would not promote conditions detrimental to the use and enjoyment of other properties in the area;

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

Findings:

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

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

Findings:

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

All variance approvals shall be considered to be conditional approvals. The Board shall have the authority to impose specific conditions as part of its approval in order to protect the public health, and for reasons of safety, comfort and convenience (e.g., to insure compatibility with

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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.

FINDINGS OF FACT: Parking Lot Landscaping Requirement to Chapter 830

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 not do any interior landscaping such as parking lot islands;
- The petition site is not within the Environmental Constraints Overlay Area;
- The required interior parking area would need to be 10% per Chapter 830, which would be 15,620 square feet (0.36 acres) of interior planted space;
- The petitioner is constructing a six foot opaque fence to satisfy the other half of the required D Value;
- The petitioner would still install perimeter landscaping and would comply with bioretention and bufferyard requirements;
- The proposed development is on part of the property that is most suitable for construction;
- The petitioner will need commercial site plan approval prior to the trucking terminal use beginning;
- The proposed development meets required setbacks;
- Conclusion: It would not impair the stability of a natural or scenic area;

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

Findings:

- See Findings A(1);
- The site gains access from S Production Drive, a local road;
- The petitioner will build out a cul-de-sac off of Production Drive and gain access to the site via a paved driveway;
- The adjoining lots are large lots primarily consisting of industrial uses;
- The proposed development has no foreseeable negative impact on planned transportation facilities or utilities;

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

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

Findings:

- See Findings A(1) and A(2);
- The development site is zoned Heavy Industrial (HI);
- Surrounding properties are zoned Heavy Industrial (HI), Light Industrial (LI) and Agriculture/Rural Reserve (AG/RR);
- If the variance request is approved, the petitioner will still be required to obtain site plan approval and meet development standards including Height, Bulk, Area and Density requirements for the HI Zoning District;
- The driveway and cul-de-sac off of S Production Drive will be paved;
- The petition site is not within the Environmental Constraints Overlay Area;
- The adjacent industrial uses to the petition site within the Heavy Industrial (HI) Zoning District are paved, in addition to the majority of uses within the Robinson Industrial Park;
- 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;
- The petitioner submitted findings, including the following:

Installation of parking island in the gravel lot area will greatly reduce the flexibility of this lot. Since the lot will primarily hold large trucks and heavy equipment, the potential for damage to the curbing (and any plants within the curbing) will be much higher than a traditional parking area.

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

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

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Findings:

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

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

Findings:

- See findings under (A);
- Conclusion: It would not promote conditions detrimental to the use and enjoyment of other properties in the area;

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

Findings:

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

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

Findings:

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

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

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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 – 1904-VAR-17 & 1904-VAR-18 – Greg Young

Kaczmarczyk: I have a question for you and it has to do with the landscaping requirements. Perhaps after all of these years I should know this. Most of the cases that we have dealt with have involved primarily the car parking and therefore it is fairly logical to figure out where the landscaping and the grassy areas go. Because you can space it between lines, in between spots and so on. This is going to be primarily for trucks so I guess my question is does the ordinance require them to be spaced out in a certain way or can you theoretically just say x percent all together?

Wilson: I think it's kind of subject to design. I think the purpose and we are fairly flexible in our landscaping requirements in that we allow them to integrate it into their drainage proposal. So you could like do a planting that would also serve as an area to collect water and filter it. Over the years the Plan Commission and BZA have had multiple discussions of the issue of paving parking lots. But our situation is our department is basically charged with defending the ordinance and the standard for granting a design standards variance is are there actually practical difficulties in using the parcel complying with the design standards requirement. It is not just a question of cost. It has got to be some other basis necessitating the granting of the variance.

McNeil: We are not ... I am sorry.

Kaczmarczyk: I just want to make, so regarding my question about where they put it, we would be very flexible if we denied that variance in terms of making sure they could do that landscaping and still have no problem...

Wilson: It has got to be a functional parking lot.

Kaczmarczyk: That puts it short and sweet. Alright, thank you. Michael?

McNeil: I will save my questions for petitioner.

Kaczmarczyk: Alright. Any questions for Larry? In that case, would the petitioner or the petitioner's representative like to address the Board? Please come on up and sign in.

**PETITIONER/PETITIONER'S REPRESENTATIVE –
1904-VAR-17 & 1904-VAR-18 – Greg Young**

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

Moss: Chelsea Moss.

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

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Moss: Yes, I do.

Kaczmarczyk: Thank you. Please proceed.

Moss: I am Chelsea Moss. I am with Abram-Moss design Group and we represent Arrow's Properties, the owner of the parcel and also Greg Young will be developing the parcel for Young Trucking. I spent a couple days ago driving around the area. There were a couple of findings of fact that I didn't quite agree with and one of those was that there was no gravel lots in the area around. Actually the property just north, Sunbelt Rentals has an entire new lot, fairly new lot, it doesn't show up on the aerial photography but you drive out there, that is completely gravel. It is fenced in but it actually doesn't have opaque fencing at this point and time. It is equipment storage area. Not far off from what we are talking about if you look at the concept of equipment storage that is essentially what my client will be doing. This is not for parking the employee's vehicles or the customer's vehicles. We are talking equipment parking so the trucks at the end of the day as well as several pieces of construction equipment that will be stored on that lot. The construction equipment even more so then the trucks will cause damage to pavement. We are talking track loaders and such and those tracks they eat up pavement. It doesn't really matter what kind of pavement it is they will eat it up over time. Additionally, any placement my client has no problem with the surrounding landscaping. We will be meeting all of those requirements. He has no problem with that, as well as putting in the necessary filtration, bioretention or other methods along the perimeter to treat the storm water. It is those interior parking islands the interior parking requirements that is of concern. Because anywhere we put those no matter what configuration it is going to greatly reduce his flexibility in parking that and storing that equipment over time. His fleet and set of equipment will change as a business grows and morphs and he needs flexibility in that as well. So any place one of those islands is going to really set him into something that may not work in a few years. Larry did bring up the kind of shot rock issue. We do have a geotech report that was conducted by Patriot Engineering and Environmental in September 1st of 2011. I know that sounds a little old but that is after that date of the fill. So we do already have the geotech report on that.

Kaczmarczyk: Thank you. Does anyone have any questions for Ms. Moss? Go ahead.

McNeil: Is it accurate to say that you are arguing that gravel would be better than either concrete or pavement?

Moss: Yes. Basically gravel will allow Greg to easily go in and fix things if need be. It makes for a much easier maintenance plan than having to go in and resurface, you know, if you go with a concrete resurfacing is much more difficult. But even on an asphalt that is going to get chipped up in a few months especially if you have got track loaders on that and stuff. There are I have mentioned neighboring property just north of him but there are other areas and other companies that do have gravel on their lot. Hanna Trucking over on West Vernal Pike does have gravel where their trucks park. You can see that from both aerial and from public right-of-way as you drive by. That lot is not fenced in either. We are proposing that the truck lot would be completely fenced in with an opaque fence per zoning ordinance requirements.

McNeil: So, you are saying that a gravel surface would be better for your client or for everyone?

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Moss: I think for everyone. Not only is it better for my client from a maintenance perspective but we also run into so you are going to have lots of equipment on there, you are going to have fuel and oil leakage. You are going to have that on any parking lot. The gravel will stop some of that even before it gets to our treatment areas and any of your impervious surfaces, your concrete, your asphalt those are just going to wash right off into those treatment areas and clog them up quicker and not filter out those impurities in the same way that a gravel surface will.

McNeil: Do you have any evidence to support those arguments?

Moss: I can pull some references on that. I don't have them with me. But that is, so gravel and porous surfaces have been shown to remove impurities. They are kind of a first year storm water treatment mechanism and a lot of areas, Monroe County and the City of Bloomington don't necessarily treatment that way. That is a conversation that Mr. Quillman and I have had before as well as Mr. Peden and I at the City of Bloomington Utilities. But they do provide kind of a primary treatment and filter out a good bit.

McNeil: When I think of filtering I think of something being captured and the clean stuff goes through the filter. So you are saying that the gravel will capture the things that are being shed by the truck.

Moss: Yes.

McNeil: And you are also arguing that someone else is, based upon an argument that it would be fair because you think someone else has a gravel lot. Therefore you should get a gravel lot as well.

Moss: I am not arguing, I am not playing that. But I am just pointing out the findings of fact show the opposite and I saw that as an error in the findings of fact that I wanted to point out. Because findings of fact did call out that there were no surrounding properties with gravel lots.

McNeil: Thank you.

Kaczmarczyk: Any other questions for Ms. Moss?

Guerrettaz: You are not to the side design standards, is that correct?

Moss: We are starting down that road right now.

Guerrettaz: So, what would be the, and I don't have the numbers necessary but what is the difference in the velocity of the water runoff say on a gravel lot versus an impervious?

Moss: I don't have the numbers off the top of my head. So from a curve number perspective you are talking about in my conversations with Terry in the past on this we have been talking about a 25 to 30 percent reduction in runoff for gravel versus asphalt.

Guerrettaz: So it slows the water.

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Moss: It slows the water and reduces the amount of runoff coming from the site and we are talking about a substantial surface area here.

McNeil: So, you are saying it's a better environmental solution to have gravel rather than some other surface?

Moss: Yes.

McNeil: Again, do you have any evidence to support that?

Moss: I don't have that with me but I can provide that.

McNeil: Did you want to table this?

Moss: If that is data that you guys would that would help your decision, we can definitely table that.

McNeil: It would help mine.

Moss: Ok.

Kaczmarczyk: If we rule today, we won't be able to rule on any information you might be able to bring us in the future.

Moss: Ok.

Kaczmarczyk: So, you are saying you would be open to tabling if we chose to? That would push this off another month and then you would have an opportunity

Moss: We would be open to that, yes.

McNeil: I would like to be persuaded that this is a better environmental solution.

Moss: Ok.

Guerrettaz: Another question just for clarification. Are you, is the petitioner looking at offsetting what would have been on the inside to a perimeter of the building or (inaudible)?

Moss: in the current design what we have been looking...

Guerrettaz: I guess that is just the question that I am asking. But if this looks like it is going to be tabled you can feel free to discuss this with your client.

Moss: Yeah. I can discuss that with my client. Because that is not something that we have discussed at this point.

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McNeil: Does staff have any comments on this notion that gravel would be a better.....?

Wilson: I think these are things we can come back with. My recollection is that gravel has slightly slower runoff rate when it's new and installed. But after you have run heavy equipment and heavy trucks over it for a while, it becomes almost like a concrete surface and so you kind of lose that filtering affect over time as you pack down with heavy trucks and equipment. The other thing that I will comment on is we do have lots where people have come in and gotten variances or gotten waivers, the one that I thinking of is Macallister Equipment, where they came in and got a variance for the area where their equipment would be unloaded. But they still had paved areas where the trucks would drive, which would somewhat diminish the amount of dust and other things coming off. We have done that in the past. I don't know the answer for all of these. Some of them are grandfathered. I do know the most recent trucking terminals we have approved Shoshone out by Printpack, which is a gravel hauling company. I know they had to do a paved parking lot.

NOTE: I was unaware Shoshone was granted a variance from paving their lot in November, 2016. I was out of the office on medical leave. – Larry Wilson

McNeil: What about this Sunbelt thing?

Wilson: I don't know the answer on that, whether it went in from us, whether it went in from the city.

Behrman: That was a commercial site plan that went in maybe 3 years ago and they paved all of their employee parking and met every design standard. It was their storage yard that did not require paving in it, so it was allowed to be gravel and that was just eh standard that I used per the ordinance. But all of the actual parking area for the employees had to be paved and they did meet that. They met all bioretention standards and did bioretention off of the gravel storage yard as well for their rental vehicles.

McNeil: Excuse me, but you're arguing that your parking of heavy 3 axle trucks is the equivalent of what's going on at Sunbelt?

Moss: So, technically per the ordinance it says we have to meet parking requirements just like we would for the employee parking. But in reality, I mean this is not the employee parking, it's our equipment lot. It's my client's equipment lot, no different than Sunbelt Rentals equipment lot that is gravel.

McNeil: So if you were renting trucks, you are saying that we wouldn't be here. You would have, you would....

Moss: I would say it's a much greyer area and I would say that would be staffs interpretation on that one. But it's a much greyer area.

McNeil: You agree that as you, the runoff and filtering capabilities of gravel will change as heavy equipment compacts that stuff.

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Moss: They will change from their initial state. But it is still a better material and does still have a lower runoff rate than your asphalt pavement. Not to mention when you are talking something like asphalt, asphalt itself has impurities from the runoff of the asphalt material and you avoid that especially since this area all of gravel lots are limestone gravel, which is a natural material here. So you are not going to have petroleum products ending up from the pavement itself in your storm water.

McNeil: Want to move to table to?

Clements: Whenever I see a fluent on asphalt and then it's followed by rain there is a quick runoff whereas stone or limestone, you know there is variation in the texture that hinders that and never mind the absorption.

Wilson: I do know this that one of the reasons we having drafted the trucking terminal ordinance and this is really a general contractors office and every use has a different standard for the amount of parking lot and the type of parking. Sunbelt is a rental company and that is a different standard than a general contractor for the amount of parking that is involved. But in drafting the ordinance in regard to trucking terminals one of the things that we considered in regarding parking is the fact that if there are spills it is easier to contain them and clean them up on pavement as opposed to limestone. That is just frankly one of the reasons we included that requirement. That is something that if you continue this we can come back with a little more information.

Clements: So then a chemical would have to be applied on the spill on the asphalt in order to clean it up in theory. Right, then is that what you are saying? I mean the process.

Wilson: Well, it wouldn't necessarily be a chemical. Sometimes they basically they have absorption pads and stuff that you can put down if there was a spill on payment that don't work very well if it's a spill on gravel. That would be my thought. But we can bring back more information for the next meeting.

McNeil: I think it's important that we, there is a big difference the first day that you have gravel there I am sure what you say is all true, but after you start compacting that with heavy, Young Trucking, heavy, heavy trucks, it changes the nature of it completely.

Moss: It does.

McNeil: So, I look to be persuaded that that is still a better thing instead of what I suspect is that this is just a question of dollars.

Kaczmarczyk: I will say I am certainly in favor of tabling this as well. Because it gives everyone an opportunity to produce a little more fact-based evidence that we can consider and make a decision and based on what I am hearing it may give your client also an opportunity perhaps to look at more creative solutions. Because we herd something and some areas paved, some areas not. That would be something you work out with your client, staff and so on. But, yeah, I am all for tabling this and having a better assessment of the facts in a month.

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Moss: Ok.

SUPPORTERS – 1904-VAR-17 & 1904-VAR-18 – Greg Young: None

FURTHER SUPPORTERS – 1904-VAR-17 & 1904-VAR-18 – Greg Young: None

REMONSTRATORS – 1904-VAR-17 & 1904-VAR-18 – Greg Young: None

**ADDITIONAL QUESTIONS FOR STAFF –
1904-VAR-17 & 1904-VAR-18 – Greg Young: None**

FURTHER QUESTIONS FOR STAFF – 1904-VAR-17 & 1904-VAR-18 – Greg Young

Kaczmarczyk: **I will move to table 1904-VAR-19 & 1904-VAR-20 to the June meeting of the Monroe County Board of Zoning Appeals.**

Clements: **Second.**

McNeil: I think you are in the wrong, I think its 1904-VAR-17 & 1904-VAR-18. Is that right?

Kaczmarczyk: 1904-VAR-17 & 1904-VAR-18, yes that is correct. **1904-VAR-17 & 1904-VAR-18, I move that we table them until the June meeting. Thank you, Michael.**

McNeil: **Second.**

Kaczmarczyk: Michael seconds. All in favor of tabling those cases to the June meeting, please say “aye”.

Clements: Aye.

McNeil: Aye.

Kaczmarczyk: Aye.

Guerrettaz: Aye.

Kaczmarczyk: It is tabled. Thank you all.

The motion in cases 1904-VAR-17, Greg Young Surfacing Requirement Variance to Chapter 806, and 1904-VAR-18, Greg Young Parking Lot Landscaping Requirement Variance to Chapter 830, in favor of tabling the variances until the June meeting, carried unanimously (4-0).

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NEW BUSINESS

6. 1904-VAR-19

Hendrix Minimum Lot Size Variance to Chapter 804

7. 1904-VAR-20

Hendrix Minimum Lot Width Variance to Chapter 804

One (1) 0.61 +/- acre parcel in Bean Blossom Township, Section 29 at 7964 N Stinesville RD. **Zoned AG/RR**

BOARD ACTION: Kaczmarczyk introduced the petition.

STAFF ACTION:

Wilson: The case is variance 1904-VAR-19 and 1904VAR-20, Hendrix Minimum Lot Size Variance to Chapter 804 and Hendrix Minimum Lot Width Variance to Chapter 804. This is for a property located at 7964 North Stinesville Road. The zoning is Agricultural/Rural Reserve. There is the general location. The Comprehensive Plan shows it as Rural Residential. There are the site conditions and as you can see it doesn't quite meet the acreage requirement which is 2.5 acres and the lot width requirement which is 200 feet for Agricultural/Rural Reserve. It is fairly level. There are no real concerns there. There is a picture of the house and the driveway. I think that is proposed addition for the house that would be allowed by this variance. The way lot width works, it's not lot width at the front but lot width at the building site. In this case it doesn't quite meet that requirement. Our recommended motion is to approval the Minimum Lot Size Requirement from Chapter 804, based upon the findings of fact and to approve the Minimum Lot Width Requirement to Chapter 804, based upon the findings of fact. I have Drew Myers next to me and he also helped work on this with Jackie and you have done some work in regard to the houses in the vicinity as far as their lot width.

Myers: That is correct. In one of the findings of fact we found that with the variance in regards to the minimum lot size, there are 12 lots in a quarter mile radius of this petition site that are also zoned Agricultural/Rural Reserve that did not meet the minimum lot size requirement. There are also in regard to variance 1904-VAR-20, in regards to the lot width there were 6 lots within a quarter mile radius that also did not meet the minimum width.

Wilson: So when we have a variance like this we look at the surrounding neighborhood to make sure that the variance being granted is not inconsistent with the neighborhood characteristics and we think is probably the most important thing that we can do regard to looking at these design standards variances. Again, our recommendation is approval of both variances.

RECOMMENDED MOTION:

Staff recommends **approval** of the minimum lot size requirement to Chapter 804 based on the findings of fact.

Staff recommends **approval** of the minimum lot width requirement to Chapter 804 based on the findings of fact.

FINDINGS OF FACT: Minimum Lot Size Chapter 804

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

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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:

- Approval of the variance would allow a household addition of 18' x 47' (846 sq. ft.);
- There are no designated natural or scenic areas nearby;
- The petitioner's site is not located in the Environmental Constraints Overlay area;
- **Conclusion:** Approval of the variance would not impair the stability of a natural or scenic area.

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

Findings:

- See Findings A(1);
- N Stinesville Road is a major collector that runs along the western property line;
- Adding a residential addition will have no foreseeable impact on utilities;
- The site utilizes a septic system, which will be upgraded with the building permit application;
- **Conclusion:** Approval of the variance would not interfere with or make more dangerous, difficult, or costly, the use, installation, or maintenance of existing or planned transportation and utility facilities.

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

Findings:

- See Findings A(1) and A(2);
- The property is zoned Agriculture Rural Reserve (AG/RR);
- The required minimum lot size is 2.5 acres;
- The lot size measures approximately 0.61 acres;
- The use is residential with surrounding areas being residential and agricultural;
- The Comprehensive Plan designates this area as Rural Reserve;
- This is a preexisting lot that has not changed dimensions since before the current ordinance;
- There are twelve lots within a quarter mile radius from the petition site, zoned AG/RR, that do not meet minimum lot size requirements;
- The proposed residential addition will meet all required setbacks;

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

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

Findings:

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

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

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

Findings:

- See Findings A(1) and A(3);
- The purpose of the minimum lot size is to preserve the general character of zoning district;
- There are twelve lots within a quarter mile radius from the petition site, zoned AG/RR, that do not meet minimum lot size requirements;
- **Conclusion:** Approval of the variance would not significantly impact the purposes of the design.

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

Findings:

- See Findings A(1) and A(3);
- The lot drains either to the west, north, or northwest;
- The residential addition does not interfere with any easements or utilities, and exceeds minimum setbacks;
- **Conclusion:** There are no foreseeable detrimental conditions to the use and enjoyment of other properties that would result from the proposed expansion.

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

Findings:

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

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

Findings:

- Practical difficulties have been demonstrated in that the lot exists in the current configuration, which does not meet the minimum lot size for the zoning district (AG/RR);
- The home (ca. 1982) was preexisting at the time of the zoning ordinance adoption in 1997, which required the minimum lot size of 2.5 acres;
- Petitioner has applied for two variances, which is the minimum necessary in order to do further development on this preexisting nonconforming lot.

FINDINGS OF FACT: Minimum Lot Width

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

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

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

Findings:

- Approval of the variance would allow a household addition of 18' x 47' (846 sq. ft.);
- There are no designated natural or scenic areas nearby;
- The petitioner's site is not located in the Environmental Constraints Overlay area;
- **Conclusion:** Approval of the variance would not impair the stability of a natural or scenic area.

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

Findings:

- See Findings A(1);
- N Stinesville Road is a major collector that runs along the western property line;
- Adding a residential addition will have no foreseeable impact on utilities;
- The site utilizes a septic system, which will be upgraded with the building permit application;
- **Conclusion:** Approval of the variance would not interfere with or make more dangerous, difficult, or costly, the use, installation, or maintenance of existing or planned transportation and utility facilities.

(3) The character of the property included in the variance would not be altered in a

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

Findings:

- See Findings A(1) and A(2);
- The property is zoned Agriculture Rural Reserve (AG/RR);
- The required minimum lot width is 200’;
- The lot width measures approximately 120’ at building line;
- The use is residential with surrounding areas being residential and agricultural;
- The petitioner also owns the adjacent parcel to the north, which already contains a primary residential structure;
- The Comprehensive Plan designates this area as Rural Residential;
- This is a preexisting lot that has not changed dimensions since before the current zoning ordinance;
- There are approximately six lots in a quarter mile radius, zoned AG/RR, that do not meet minimum lot width requirements at building line;
- **Conclusion:** Approval of the variance would not alter the character of the property in a manner that substantially departs from the characteristics sought to be achieved and maintained with the relevant zoning district.

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

Findings:

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

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

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

Findings:

- See Findings A(1) and A(3);
- The purpose of the minimum lot width is to preserve the general character of zoning district;
- **Conclusion:** Approval of the variance would not significantly impact the purposes of the design.

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

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etc.); and,

Findings:

- See Findings A(1) and A(3);
- The lot drains either to the west, north, or northwest;
- The residential addition does not interfere with any easements or utilities, and exceeds minimum setbacks;
- **Conclusion:** There are no foreseeable detrimental conditions to the use and enjoyment of other properties that would result from the proposed expansion.

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

Findings:

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

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

Findings:

- Practical difficulties have been demonstrated in that the lot exists in the current configuration, which does not meet the minimum lot width for the zoning district (AG/RR);
- The home (ca. 1982) was preexisting at the time of the zoning ordinance adoption in 1997, which required the minimum lot width of 200 feet at building line;
- The configuration of the lot is such that the residential addition would meet neither the minimum lot size nor minimum lot width requirements no matter the design or location.

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

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

QUESTIONS FOR STAFF – 1904-VAR-19 & 1904-VAR-20 – Hendrix

Kaczmarczyk: Thank you Larry. Any questions for Larry or Drew? Put the new guy on the spot. Alright, no questions for staff. Is the petitioner or the petitioner's representative here and would

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they like to address the Board? Alright. Is there anyone here who would wish to speak in favor of this petition? Anyone here who would like to speak in opposition to this petition? Seeing none. I will entertain discussion or a motion.

**PETITIONER/PETITIONER'S REPRESENTATIVE –
1904-VAR-19 & 1904-VAR-20 – Hendrix: None**

SUPPORTERS – 1904-VAR-19 & 1904-VAR-20 – Hendrix: None

FURTHER SUPPORTERS – 1904-VAR-19 & 1904-VAR-20 – Hendrix: None

REMONSTRATORS – 1904-VAR-19 & 1904-VAR-20 – Hendrix: None

**ADDITIONAL QUESTIONS FOR STAFF –
1904-VAR-19 & 1904-VAR-20 – Hendrix: None**

FURTHER QUESTIONS FOR STAFF – 1904-VAR-19 & 1904-VAR-20 - Hendrix

Kaczmarczyk: I will move on case number 1904-VAR-19 and 1904-VAR-20, the Hendrix Minimum Lot Size Variance and Minimum Lot Width Variance to Chapter 804, I move that we approval both variances, based on the findings of fact.

McNeil: Second.

Kaczmarczyk: Motion and a second. Larry please call the roll.

Wilson: The votes are on petitions 1904-VAR-19 and 1904-VAR-20. A vote in favor is a vote to approve both petitions based upon the findings. Peter Kaczmarczyk?

Kaczmarczyk: Yes.

Wilson: Michael McNeil?

McNeil: Yes.

Wilson: Margaret Clements?

Clements: Yes.

Wilson: Bernie Guerrettaz?

Guerrettaz: Yes.

Wilson: The variances are granted 4 to 0.

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The motion in cases 1904-VAR-19, Hendrix Minimum Lot Size Variance to Chapter 804, and 1904-VAR-20, Hendrix Minimum Lot Width Variance to Chapter 804, in favor of approving the variances, carried unanimously (4-0).

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NEW BUSINESS

- 8. 1904-VAR-21** **Schroeder Front Yard Setback Variance to Cedar Springs PUD**
- 9. 1904-VAR-24** **(Ordinance #2008-17)**
Schroeder Buildable Area Variance to Chapter 804
One (1) 0.32 +/- acre parcel in Perry Township, Section 1 at 4677 E Cache Creek Lane. **Zoned PUD/ECO3.**

BOARD ACTION: Kaczmarczyk introduced the petition.

STAFF ACTION:

Wilson: The last case on the docket tonight is the Schroeder Front Yard Setback Variance to the Cedar Springs PUD and that is petition 1904-VAR-21. 1904-VAR-24 is the Schroeder Buildable Area Variance to Chapter 804. The site is 0.32 acre building parcel and it is located at 4677 East Cache Creek Lane. The zoning is PUD and ECO3. Just to refresh the memory of the Board a PUD is basically a custom zoning ordinance for a particular parcel that has been approved by the Plan Commission and the legislative body, either the Commissioners or the City. The current zoning is PUD. The Comprehensive Plan shows this as Residential. There is the lot in question. That is the slope map, which is not impacted by this particular housing project. Basically the history as I understand it, again, this is second hand, it wasn't my case to begin with. However, what happened was during the construction it was discovered after the foundation had been placed and the house was at a fairly advanced state of construction, that it was over the setback lines as setup by the PUD ordinance as well as being over into a drainage easement, in the front yard easement as well. There is the site. As you can see, the setback is 25' feet and there is a slight encroachment. There is also an encroachment into the front yard easement, which is a violation of buildable area in that we do not treat easements as buildable area under the ordinance. In this case we recommended denial of both variances, based upon the findings of fact. Again, it's probably the best example there is of a self-created hardship, self-created practical difficulties. They are represented by Mr. Carmin and today he emailed me a copy of on question we had that was set forth in our report was we did not know exactly what easements, what utilities might be impacted by this construction. He as presented tonight a drawing showing the location of those utilities in relation to that front easement and I will distribute that to the Board and keep a copy for the record.

RECOMMENDED MOTIONS:

Deny the design standards variance to the Front Yard Setback standard in the Cedar Springs Subdivision Planned Unit Development (PUD) based on the findings of fact.

Deny the design standards variance to the Buildable Area standard in Chapter 804 based on the findings of fact.

FINDINGS OF FACT: Front Yard Setback Standard

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

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

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

Findings:

- The petition site exists in a suburban context;
- The single family residence is the only development on this site;
- The petition site is 0.32 acres +/-;
- The substantially complete residential structure has a total footprint of 2,405 square feet according to the site plan submitted by the petitioner;
 - The home does not encroach into the riparian conservancy area, and it meets the required side and rear setback standards according to the submitted survey;
 - The front yard setback encroachment is 5.3 feet from the garage into a 25 foot setback measured from the southern property line. The western portion of the home also encroaches approximately 2 feet into the front setback;
 - This property is in the Environmental Constraints Overlay Area 3 and construction is substantially complete;
 - E Cache Creek is classified as a local road with a 50 foot right-of-way (25 feet on each side from centerline) along the petition site;
 - The Monroe County Highway Department did not have concerns regarding the front setback encroachment toward E Cache Creek Lane;
 - Conclusion: It would not impair the stability of a natural or scenic area.

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

Findings:

- See Findings under Section A(1);
- The residence would not have an effect on pedestrian or vehicular movement along E Cache Creek Lane. Sidewalks will be located in the right-of-way fronting the lot;
- 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);
- The site is zoned Planned Unit Development (PUD);
- Surrounding properties are zoned the same;
- 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;
- Property value tends to be subjective as it is difficult to anticipate adverse effects;
- 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 and B(1);
- Conclusion: It would not promote conditions (on-site or off-site) detrimental to the use and enjoyment of other properties in the area.

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

Findings:

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

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

Findings:

- There is no practical difficulty in the use of the property as the encroachment was self-created.
- Relocation of the structure on the lot would alleviate the need for a variance.

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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. 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.

FINDINGS OF FACT: Buildable Area Standard

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

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

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

Findings:

- The petition site exists in a suburban context;
- The single family residence is the only development on this site;
- The petition site is 0.32 acres +/-;
- The substantially complete residential structure has a total footprint of 2,405 square feet according to the site plan submitted by the petitioner;
 - The home does not encroach into the riparian conservancy area according to the submitted survey;
 - This property is in the Environmental Constraints Overlay Area 3;
 - The buildable area encroachment is 0.3 feet into a 20 foot utility easement from the southern property line;
 - E Cache Creek is classified as a local road with a 50 foot right-of-way (25 feet on each side from centerline) along the petition site;
 - The petitioner maintains that the home footprint does not conflict with the actual utilities on 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 under Section A(1);
- The residence would not have an effect on pedestrian or vehicular movement along E Cache Creek Lane. Sidewalks will be located in the right-of-way fronting the lot;
 - 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;

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(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);
- The site is zoned Planned Unit Development (PUD);
- Surrounding properties are zoned the same;
- 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;
- Property value tends to be subjective as it is difficult to anticipate adverse effects;
- The 0.3 foot encroachment into the utility easement does not impact the use of the easement for utilities to access the platted easement area;
- 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 and B(1);
- Conclusion: It would not promote conditions (on-site or off-site) detrimental to the use and enjoyment of other properties in the area.

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(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:

- There is no practical difficulty in the use of the property as the encroachment was self-created.
- Relocation of the structure on the lot would alleviate the need for a variance.

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. 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 – 1904-VAR-21 & 1904-VAR-24 – Schroeder

Kaczmarczyk: Ok, were you set Larry?

Wilson: That is all that I have.

Kaczmarczyk: Anyone have any questions for Larry? Seeing none. Go right ahead, Michael.

McNeil: How did we get here and was this just a mistake and it was discovered or was there something more sinister?

Wilson: I think Mr. Carmin may be able to explain how it occurred. Again, I did not prepare the report and I do not know a lot of the history. Other than the fact that it was a case where there was nothing we could really do but come forward for a variance or they could have moved the house. They could have redone that section on their house.

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**PETITIONER/PETITIONER'S REPRESENTATIVE –
1904-VAR-21 & 1904-VAR-24 – Schroeder**

Carmin: Mike Carmin representing the petitioner. To answer your question immediately and I will get back to other points, it was a mistake, yes. Just how this all came about, Mary Chitwood is the developer of this subdivision. She is not doing the home construction. The lot is owned by the Schroeder's. Dave McArdle, McArdle and Company is the contractor building the house. Greg was just doing a drive by through the subdivision one evening and he stopped and he thought, this looks wrong, just visually. He thought it didn't look in the right place. So he contacted Dave McArdle and went out and looked and, yeah, it was wrong. It was not in the right place. The right place is entirely Dave McArdle, McArdle Company's responsibility. He measured it off. What he tells me is he has been doing this for 30 years, this is first time it has happened to me. He said he has no explanation other than I measured from the wrong place. It should not have happened. There is just no excuse. It should not have happened. I measured from the wrong side of the sidewalk, which makes no sense either that he would do that. But it was a mistake. If you look at the site plan, you can see there is no gain to the builder, the lot owner, the home owner by putting it where it is. The lot is adequate size. We are not avoiding a topographical feature or a setback problem, an obstacle, it could have been moved back the requisite number of feet. It would have been shifted about 1 foot one side but it fits on the lot within all of the required setbacks. There is no gain. It was not something that was done so we could get by and say, gee, now it's there so please forgive us. But meanwhile we got rid of a problem. There was no problem. It was a simple mistake and that is a problem. Because there is no good fix for this. When this was discovered the house was essentially what you see in the photograph. It was already under roof. The walls were in. The foundation was in. The garage was there. The major portion of where this encroachment is the garage and so it's already under roof. So when Mr. McArdle called me that morning and says, hey, we have got a problem. This is what we found out. Within a few minutes I called Jackie and that is how it ends up on her desk. I said, Jackie I need an appointment to talk about filing for a variance. Because I got a problem I can't fix. So, it was a self-reported issue. It is not an enforcement action. It was a self-reported issue and we are proceeding with the request for a variance. When you look at the staff report there are 4 letters. 2 words. The word no appears twice and if you strike that you are good to go. I understand the staff position that both of those it's the last finding under both variances under the issue of practical difficulties or not. We are here. This is not a request for a variance by entitlement. You must do this. You are not required to approve the variance. I understand that. It's not it your position to go out and fix the problems of the world when things happen. What we have in this case, in one sense there are practical difficulties. Because look at who is impacted first and that is the lot owner, who is having a home built, who did not do that, who didn't cause it to happen. He hired somebody competent, hired a competent builder who's made a mistake and the first view of this is the homeowner has got to deal with that problem. They have got a home on a construction that cannot be finished and it has to be moved, it has to have the roof realigned and a portion of the roof torn off and the garage reduced by 5' feet, which doesn't work. It doesn't work. There is no good fix for this with extreme economic waste and that is a practical problem for the home owner who didn't cause this. The culprit in the whole thing is unfortunately, because he is a friend of mine, I hate to say it, is McArdle and Company. They made the mistake and as the builders it is their responsibility and the mistake the footprint which caused the entire problem. If you look at the subdivision plat, which is on there, I don't know if you showed it, its page 98 I believe in the packet and you can see Lot 24, which is our lot and the

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significance of the location of the lot is the environmental impact that this has. This is a t street where the cross street that our lot is on is a cul-de-sac. Just 3 houses west of us, one or two maybe across the road but we are talking a minimal traffic generation area. So we got a building that is going to be closer to the road by several feet than what should have been allowed if you are to approve the variance and it could remain there. So, what is the practical impact on anything? It doesn't not conflict with any utilities at all. They are all underground already. It does not present, in my opinion, a traffic safety issue of being too close to the front. It was substantial distance off the paved road. It is not a road that is ever going to be widened. It is near going to be a through street. It ends in a cul-de-sac just three houses to the west. So from a safety, traffic safety issue, it's a nonissue. We really come back to this happened, what do we do about it and the options are tear down, which is a significant problem, very much a practical problem for the home owner. Recourse against the builder? Certainly, probably. What good that recourse is and when it gets done and how long it takes and what happens to the structure in the meantime that's two-thirds completed. It is problem and there is no good answer for it. I think you do no harm to community standards, to community development if you approve the variance. We are not setting up, in again my opinion, I would suggest that we are not setting up a dangerous precedent where everyone is going to be coming in asking for this. Because we have some fairly specific facts there that there is no gain, no advantage that in any way would suggest that this was intentional. It was a mistake and mistakes are going to happen from time to time. We hope it never does. We hope it happens to the other guy but this one happened to us and there is only two ways to deal with. The variance to allow it to stay when it has no harm to the public and no harm to the community and the neighborhood or a tear down, which is a significant economic problem. That is the simple story.

McNeil: Now you said this was a mistake. Is that correct? Miss-staking?

Carmin: Yes. The contractor is responsible for measuring the setback line and he did the measurement and he did it wrongly. It was his error.

McNeil: So, that suggests to me that there ought to be a drawing of this plan that shows the house properly located versus what we have here, showing it encroaching. Is there such a drawing that is without mistake?

Carmin: They don't do a drawing that puts the footprint of the house on the lot. I mean, they have got the lot and you saw that they have got the lot, you put in the setbacks and then he goes to what should have been the required point and you simply measure back from there and anchor it. So, no there is not a drawing of what it is going to be. Anything like that wouldn't have been to scale. This survey that you are looking was done after the fact to establish what the measurement is, what is the extent of the encroachment. There was no, visually it was clear that there when studied it was going to be an encroachment too far forward so purposes of this petition we want exact measurements, exactly how much is the damage? How much is it encroaching? That is what led to this survey that you have there in your packet.

McNeil: How could he have made a mistake if he had nothing to go by when he went out there it measure?

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Carmin: The curb is already in. The curb and the sidewalk are already in. This is not the first house being built in this subdivision. He had what he thought was the identified part and then the setback 25' feet from that line is on the subdivision plat. So he knew the required setback and he knew where he was supposed to measure from. He just didn't measure from the right place. This aspect of it should have been fairly routine. It just wasn't done correctly.

McNeil: So, it should have encroached into the conservation easement instead of out front.

Carmin: No, we are not going to encroach.

McNeil: If you move it back it is right in the conservation easement. Isn't it?

Carmin: But there is 2' feet on the east side before you hit the side yard setback. It is a minor shift of the building and you can even move it back 5' feet and never get in that conservation area.

McNeil: I don't know I see the corner right at the edge of conservation easement.

Carmin: As the building is oriented.

McNeil: Move the building back to where it was inside the dotted line that is accepted, it would be in the conservation easement.

Carmin: I disagree with you. If you look there are 2' feet between the side yard setback and the building wall on the east side. It is a very minor shift of the orientation of the structure to the square it a little bit north and south so that as you push it goes further back you would not be into that conservation area.

McNeil: So there was errors both in two dimensions, not just going back north and south. It is also east and west as well.

Carmin: No. Once they started the area of the conservation easement was known so once they started they staked it and at a known point and correctly determined it had a beginning point and then the dimension of the building being put in from there, you had architectural plans that gave you all the wall dimension so it all fit on the lot after that without having to go out and do anything different.

McNeil: So, is this drawing what is actually there or is it..?

Carmin: Yes, that is as built right now, yes.

McNeil: There exists nothing to show us what was planned for this property prior to this?

Carmin: There would beThe subdivision plat would have setbacks on it. The building setback 25' feet, side yard setback 6' feet, had the conservation area marked on it. Then you have got the architectural plans that gives all of the dimensions and lengths so you start at a known point and you put it in. It works.

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McNeil: Do you have any evidence to show that this was a mistake?

Carmin: Other than Mr. McArdle's word that he didn't do it intentionally, no. I don't know what you would be looking for. There is no drawing that shows an attempt to place this house on the lot and it wouldn't fit. There is nothing like that. It never happened.

McNeil: I think I need a better explanation as to how this mistake occurred. I am expecting I think when things are built you have a plan and I would expect to see a plan that showed this building in compliance rather than the only drawing we have shows it clearly not in compliance and you are telling me, well, that is just an honest mistake and mistakes happen. Do you have any evidence to show this was really a mistake and you know, what was the person going by when they went out and platted this and set up the corners of the foundation? Where is it?

Carmin: I don't know how to answer your question because I don't understand it.

McNeil: I think you do understand that when people build something they have a plan.

Carmin: They architectural plans, yes. They have the lot dimensions and setbacks located on it, yes. They have a corner of the lot and they know where that is. They measure in from the corner. They measure from the point to get the front yard setback, which was done incorrectly, which is the mistake and then they plot the house from that.

McNeil: So, you are saying there is a drawing that shows the footprint of the house and then there is some other thing that shows the place where the house is going to be and there is some instructions that say where we are going to put the footprint on that plot.

Carmin: No, I am not saying that. I saying it doesn't exist. It wasn't done.

McNeil: Then how can you say it was a mistake?

Carmin: Because I have the person responsible for it saying I am the one that did the measurement. I measured from the wrong place. It was my mistake when I went back 25' feet from the point where I started then I should have been in the right position and I wasn't because I started at the wrong place, which was my error, my mistake.

McNeil: Are you testifying for that person?

Carmin: I am sorry?

McNeil: Is that person here?

Carmin: No, he is not.

McNeil: Are you testifying for them?

Carmin: I am making statements on his behalf that he has made to me, yes.

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Guerrettaz: So maybe I can, I have had experience with staking houses. (Inaudible) Unless he measured back from where he thought the lot lines were, he measured back to the back corner next to the conservation easement maybe over on this side. He saw the house would fit on the lot where there were no confines around the plat. I am just asking if that is true.

Carmin: Yes. It's just that it all starts from the false premise that that first point was correctly determined. So everything from there then is in the wrong place.

Guerrettaz: Because of the 6' ft. setback on the east, it is actually 8.4.

Carmin: Right.

Guerrettaz: I am just trying do the communication, if the building would have been put back where it should have been and saw that it was offset, it was in the conservancy area, he still have 2 and half feet to wiggle the house over which would have put him over back off that line.

Carmin: Yes. That is what I was trying to say earlier that with that 2' feet plus space in there on the east side that if they were going to get into the conservation area, then it did not appear that it was going to give what they measured out. It was easily correctable without getting in the conservation area. So, that is why I say there is no gain. The house could have gone on there if properly positioned and measured at the right place.

Guerrettaz: I have seen that placement of the house like that many, many times where confines of the lot are situated in such a way that you start moving the architectural around and see how it fits and unless it's on the limits, it's a build. But if you start from the wrong point, which Mr. McArdle probably should have a land surveyor go out and stake it or do whatever he should have done or she, I have just seen this, very rarely, but I have seen it more than I would like to admit that it happened. Whether they have plot plan or they don't in that stage.

McNeil: Larry, do you have any comment on all of this?

Wilson: One of the problems we have is now we have no provision that requires a site plan survey when someone comes in for a Building Permit and often times it will be either based on blueprints or it will be based on a sketch on the back of an envelope even or they take the aerial photography we have and the draw out with a pen where the building is going to be. So it is somewhat of a guess on their part and most jurisdictions require that there be a state survey before you start construction just to avoid this problem. It is something that we can probably look at as we update the ordinance as whether that would be necessary or not. In case like this when you are like trying to squeeze it in it is probably prudent to have a surveyor look at it.

Guerrettaz: Again I don't want to get in the weeds about whether there is a plot plan available. (Inaudible) These mistakes have happened. They come off of the curb. They come off of the sidewalk. (Inaudible) Would there be enough room to park a car?

Carmin: No, not on a large vehicle. I thought it was 24' feet deep on the garage, so even at 19' feet it crowds front ends and back ins. A normal parking spot is 9' foot by 18' foot.

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Guerrettaz: Cars would have to be parked out.

Carmin: Yeah and that changes the roof line so that creates another architectural changes because it holds the roof line back.

McNeil: Do you concede that the footprint of this house made for a tight fit on this lot?

Carmin: Absolutely.

McNeil: Do you think that justifies a little bit of extra care to not have to have a mistake like this?

Carmin: It is an easy yes on that. But then there ought to be appropriate care given to every aspect of it. I don't know that it elevates it. There ought to be appropriate care given to every step of the process and that doesn't guarantee that makes don't happen.

McNeil: I would like to hear from the mistake maker or we can, I know how I will vote today.

Kaczmarczyk: Where you just making a suggestion or just saying?

McNeil: Seeing what he thinks about it.

Kaczmarczyk: Do you think he would be willing to address it?

Carmin: Yeah, if that's what the Board requires, then absolutely yes.

McNeil: I would like to be persuaded that it was an honest mistake and I am not persuaded.

Kaczmarczyk: And I will add even if it was an honest mistake, I really agree with some of the points Bernie was making. This was fitting a large house in a very tight slot and I have a lot of trouble excusing him for not having been much more careful than this. Honest mistake or not and it would be very difficult for me to say, well, it was a mistake so we can just write it off when it seems that he really, as was said, really should been careful to take every care necessary before getting to the point that they are at. So, yeah, I wouldn't mind hearing from him myself to help us to understand how this really happened. Because, yeah, between the questions I have heard on either side of me I am really, I am really unsure. Yeah, I would like to hear from the builder himself too.

McNeil: Is that fine with you?

Carmin: Yes.

SUPPORTERS – 1904-VAR-21 & 1904-VAR-24 – Schroeder: None

FURTHER SUPPORTERS – 1904-VAR-21 & 1904-VAR-24 – Schroeder: None

REMONSTRATORS – 1904-VAR-21 & 1904-VAR-24 – Schroeder: None

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ADDITIONAL QUESTIONS FOR STAFF

– 1904-VAR-21 & 1904-VAR-24 – Schroeder: None

FURTHER QUESTIONS FOR STAFF – 1904-VAR-21 & 1904-VAR-24 - Schroeder

McNeil: I would move to continue 1904-VAR-21 and 1904-VAR-24, so we can hear from the person who made the mistake.

Kaczmarczyk: I will **second**. All in favor of tabling 1904-VAR-21 and 1904-VAR-24 to the June BZA Meeting, please say “aye”.

McNeil: Aye.

Kaczmarczyk: Aye.

Clements: Aye.

Guerrettaz: Aye.

Kaczmarczyk: Opposed? None. It is tabled.

The motion in cases 1904-VAR-21, Schroeder Front Yard Setback Variance to Cedar Springs PUD, and 1904-VAR-24 (Ordinance #2008-17) Schroeder Buildable Area Variance to Chapter 804, in favor tabling the petitions until the June BZA Meeting, carried unanimously (4-0).

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NEW BUSINESS

10. 1904-VAR-22

Beargie Front Yard Setback Variance to Chapter 804

11. 1904-VAR-23

Beargie Minimum Lot Size Variance to Chapter 804

One (1) .92 +/- acre parcel in Washington Township, Section 16 at 505 E Chambers Pike. **Zoned AG/RR.**

BOARD ACTION: Kaczmarczyk introduced the petition.

STAFF ACTION: Petitions were continued by staff.

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REPORTS:

Planning/Wilson: I do have a brief report. As expected, we were, you were actually, sued in federal court by Geft Outdoor Advertising Limited. I am not going to go into a lot of detail on the case just because there is a chance always that it could be sent back to you for additional findings.

McNeil: Is that the giant television screen thing?

Wilson: Yes. It is the electronic billboard.

McNeil: Maybe if they showed Game of Thrones from time to time it would help.

Kaczmarczyk: Spoilers.

Wilson: That is all that I have.

Kaczmarczyk: That was it you said?

Wilson: Huh?

Kaczmarczyk: You said that was it?

Wilson: That was all the report I had, yes.

Legal/Schilling: No report

The meeting adjourned at 6:56 P.M.

Sign:

Attest:

Peter Kaczmarczyk, Chairman

Larry J. Wilson, Secretary

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