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**BOARD OF ZONING APPEALS  
Regular Meeting Minutes  
July 10, 2019 - 5:30 p.m.**

**CALL TO ORDER**

**ROLL CALL**

**INTRODUCTION OF EVIDENCE**

**APPROVAL OF AGENDA**

**APPROVAL OF MINUTES**

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

**ROLL CALL: Mary Beth Kaczmarczyk, Bernie Guerrettaz, Margaret Clements**

***ABSENT: Michael McNeil, Mark Kruzan***

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

**OTHERS PRESENT: David Schilling, Legal**

**INTRODUCTION OF EVIDENCE:**

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

- Monroe County Comprehensive Land Use Plan (as adopted and amended)
- Monroe County Zoning Ordinance (as adopted and amended)
- Monroe County Subdivision Control Ordinance (as adopted and amended)
- Board of Zoning Appeals Rules of Procedure (as adopted and amended)
- Cases advertised and scheduled for hearing on tonight's agenda

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

**APPROVAL OF AGENDA:**

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

**APPROVAL OF MINUTES:**

**No meeting minutes to approve at this time.**

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**OLD BUSINESS:**

- 1. 1812-VAR-40 Patzner General Contractor Use Variance to Chapter 802.**  
One (1) 0.68 +/- acre parcel in Perry Township, Section 28 at 5605 S Old State Road 37. **Zoned ER.**

**NEW BUSINESS:**

- 1. 1904-VAR-22 Beargie Front Yard Setback Variance to Chapter 804**
- 2. 1904-VAR-23 Beargie Minimum Lot Size Variance to Chapter 804**  
One (1) 0.92 +/- acre parcel in Washington Township, Section 16 at 505 E Chambers Pike. **Zoned AG/RR.**  
**\*\*\*CONTINUED BY PETITIONER\*\*\***

- 3. 1905-VAR-29 Moore Front Yard Setback Variance to Chapter 804**  
One (1) 3.25 +/- acre parcel in Perry Township, Section 32 at 6000 S Empire RD. **Zoned AG/RR.**

- 4. 1906-VAR-30 Smith Rear Yard Setback Variance to Chapter 804**  
One (1) 1.64 +/- acre parcel in Perry Township, Section 1 at 4559 E Lampkins Ridge Rd. **Zoned ER.**

- 5. 1906-VAR-31 Rogers and Country Club Inc Sign Variance to Chapter 807**
- 6. 1906-VAR-32 Rogers and Country Club Inc Landscaping Design Variance to Chapter 830**  
One (1) 0.26 +/- acre parcel in Perry Township, Section 17 at 2801 S Rogers ST. **Zoned LB.**

- 7. 1906-VAR-34 Feaster Side Yard Setback Variance to Chapter 833**  
One (1) 0.69 +/- acre parcel in Van Buren Township, Section 3 at 550 S Kirby Rd. **Zoned RE1**

**REPORTS:**

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

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**OLD BUSINESS**

**1. 1812-VAR-40 Patzner General Contractor Use Variance to Chapter 802.**

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

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

**STAFF ACTION:**

Nester: This first item under Old Business is a case that was continued from The January Board of Zoning Appeals meeting and it is the Patzner General Contractor Use Variance. It is one 0.68 acre parcel in Perry Township, Section 28. Located at 5605 South Old State Road 37. It is zoned is Estate Residential. In the current zoning map it is Estate Residential all around, located off of South Old State Road 37 nearby residential areas surrounding it and also Pre-existing Business to the north. In the Comprehensive Plan we have this as Mixed Residential and the current site conditions show that there is a home on the lot and an accessory structure. Do note that that is all one lot of record and it previously received a Minimum Lot Size Variance in order to put the accessory structure in the northeast corner of the property. The slope conditions here are fairly flat and here are some site photos for you. On the upper left is showing a home on the lot. This home is rented as a long-term rental. So, Mr. Patzner, who is the petitioner does not live in the home and this is important when it comes to uses in the ordinance under Home Based Business. It is a requirement that the owner of the business live on the lot. In the upper right hand side you see the accessory structure that was built recently and this is the structure that is being used for Riverway Plumbing business. On the bottom center photo you are viewing north on Old State Road 37. Here are a few more site photos. On the upper left you can see 2 vehicles used for the business and then the bottom center photo is the structure that was constructed. It was constructed after a variance for the minimum lot size for this lot and per the petitioner's letter before that minimum lot size variance was granted it stated that the purpose of that structure was to be used for residential purposes only. It was issued as a residential structure but it's currently being used as a commercial structure. The reason that we are here tonight is so that they can get a Use Variance to approve a General Contractor use which is commercial on this site and go through the process of adapting this building for commercial use. Here are a few more site photos just along the northern property line. In the upper left is just a view of the area and then a bird's eye view of this site as well. It is kind of hard to see but there is stated what portion of the building that he has asked to be used as a General Contractor. Part of it is for storage, personal storage and the other half is used for plumbing business, storage and offices. The petitioner is here as well to speak to the use of the building if you have questions. Here is a letter to the BZA stating their intent for the Use Variance if they can be granted the use Variance to either stay on the property or give them more time. The petitioner does own a commercial site to the north and it is zoned appropriately for General Contractor use, so the idea being that they could move to a site where the use would be permitted long-term. The recommended motion by staff is to deny the Use Variance for General Contractor and I will take any questions.

**RECOMMENDED MOTION**

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

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**FINDINGS OF FACT: Use Variance**

812-5 Standards for Use Variance Approval: In order to approve an application for a use variance, the Board must find that:

**(A) The approval will not be injurious to the public health, safety, and general welfare of the community:**

**Findings:**

- Approval of the use variance would allow the petitioner to continue the commercial use in a residential zone without living on the property;
- The proposed use would require site plan approval in order to reach compliance;
- The property derives access from S Old State Road 37, which is a minor arterial (100' Right-of-way);
- The petition site is not located in FEMA Floodplain;
- There are no known karst areas on the lot;
- There is a rental home on the property;
- Conclusion: The approval would not be injurious to the public health, safety, and general welfare of the community.

**(B) The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner:**

**Findings:**

- See Findings under (A);
- Approval of the use variance would permit a filing to obtain site plan approval for the proposed General Contractor use;
- The Monroe County Public Works Department and Monroe County Planning Department review site plans to confirm uses are meeting development standards on subject property in the County;
- The effect of the approval of the use variance on property values is difficult to determine;
- The neighboring uses on S Old State Road 37 are residential in nature;
- Conclusion: The use and value of the area adjacent to the property included in the variance may or may not be affected in a substantially adverse manner.

**(C) The need for the variance arises from some condition peculiar to the property involved:**

**Findings:**

- The use of "General Contractor" is not a permitted use in the Estate Residential (ER) zoning district, thus requiring the variance to be filed;
- The Estate Residential (ER) zone permits: Historic Adaptive Reuse; Accessory Apartments; Accessory Livestock; Guest House; Historic Adaptive Reuse; Home Based Business; Home Occupation; Residential Storage Structure; Single Family Dwelling; Temporary Dwelling; Two Family Dwelling; Cemetery; Governmental Facility; Religious Facilities; Telephone and Telegraph Services; Utility Service Facility; Water Treatment Facility; Bed and Breakfast; Real Estate Sales office Or Model; Park and Recreational

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Services; Private Recreational Facility; or Construction Trailer;

- The site has a single family dwelling, detached garage, and residential storage structure. The 2400 square foot residential storage structure is used as residential storage, office space, and commercial storage;
- There is no substantial evidence the property cannot be utilized under one of the permitted uses listed in the Estate Residential (ER) zoning district, including the permitted use as a long term rental property;
- Conclusion: The need for the variance does not arise from some condition peculiar to the property involved.

**(D) The strict application of the terms of the Zoning Ordinance will constitute an unnecessary hardship if applied to the property for which the variance is sought; and,**

**Findings:**

- See Findings under (C);
- General Contractor is a medium intensity use not permitted on this Estate Residential (ER) zoned lot;
- General Contractor is permitted in in the General Business (GB), Light Industrial (LI), and High Industrial (HI) Zoning Districts per Chapter 802;
- The petitioner could file for a rezone;
- Conclusion: The strict application of the terms of the Zoning Ordinance will not constitute an unnecessary hardship if applied to the property for which the variance is sought.

**(E) The approval does not interfere substantially with the Comprehensive Plan. Especially, the five (5) principles set forth in the Monroe County Comprehensive Plan:**

- (1) Residential Choices;**
- (2) Focused Development in Designated Communities;**
- (3) Environmental Protection;**
- (4) Planned Infrastructure;**
- (5) Distinguish Land from Property;**

**Findings:**

- See Findings under (A);
- The Urbanizing Area Plan designates the subject site as Mixed Residential, which is described previously in this report. The neighboring properties are also zoned Mixed Residential in the MCUA plan. Though this area calls for commercial activity, the MCUA plan specifies neighborhood amenities and not particularly general contractor uses that are typically found in the industrial zones;
- The property does not have evident environmental constraints;
- The proposed use and its “Medium” intensity classification in this area is not consistent with the Comprehensive Plan’s designation;
- The structure being used as an office was permitted under a residential accessory structure.

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No new development is being proposed;

- Conclusion: The approval does interfere substantially with the Comprehensive Plan.

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

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

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

Kaczmarczyk: Any questions for staff? Would the petitioner like to come up and speak?

**PETITIONER/PETITIONER’S REPRESENTATIVE – 1812-VAR-40 - Patzner**

Kaczmarczyk: Sign in sir. Please state your name.

Patzner: Neil Patzner.

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

Patzner: I do.

Kaczmarczyk: Ok.

Patzner: Basically this kind of started as a personal storage use. I did run the office out of my own house at the time I did construction this. The company kind of grew like I talked the last time, kind of grew out of control at the start. So I kind of moved everything into this building but also I purchased this lot 2 years ago knowing that I am going to move out into this property that I have 5 acres on, Old South Walnut Pike. Right now, we are dealing with septic issues. I still plan to be out this year, out of the building on Old State Road 37. I am just trying to get either a septic approval so I can move on and get construction going or I am going to have to abandon that lot and actually buy another piece of property to move my company to. I know we talked about using this as a company variance for the time being. But realistically I don't plan to stay there. This is just kind of like a bridge for the next step.

Kaczmarczyk: Any questions?

Guerrettaz: The other property that you have is a 5 acre tract that you introduced to the BZA back in December or last year sometime. You were planning on developing that property for your business.

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Patzner: Correct.

Guerrettaz: And that is on South Walnut Street?

Patzner: South Walnut Pike.

Guerrettaz: Say that again.

Patzner: South Walnut Pike.

Guerrettaz: Oh, ok I thought you said Vernal Pike before. So, where are you at with your site plan and any submittals? Because to get your septic permit you will need a commercial septic permit, correct, to get your septic permit for your business. Is that right?

Patzner: That is correct but there is an ordinance on it saying that I cannot, I have to tie into to city sewer for the use of this project. The issue that I am running into is I have no city way of tying on to make this a city connection. I just talked to Jackie tonight that either we create another variance to put septic back into this development but right now the city is pushing back and they want me to bring up this septic line all the way past Fairfax up the road and that would pretty much unmind my whole project.

Guerrettaz: Are you the property just between PTS Electronics and ....

Patzner: South Storage Rentals.

Guerrettaz: Ok.

Patzner: Ok, so my goal is either option 1 is to do a force main up to Cardinal's Glen, which the county has already denied me to us their right-of-way as a line to run a sewer line up to Cardinal's Glen. Now, I have to go to each personal property owner to see if I can get a right-of-way to get up to Cardinal's Glen. So, that is where I am at in the process right now. Otherwise I am going to have to take it back to rezoning and trying to get a septic system set up for this building. Most of it, you know, my main goal is to get my building up and going. But right now, you know, I am hitting hiccups right now and I am still hopefully we can get this all ironed out in a couple of months. The building is not going to take very long to build so realistically I am still hoping to be out by the end of 2019.

Guerrettaz: So, when you say septic, you have got, and I remember the petition, you have to tie onto sewer.

Patzner: Right.

Guerrettaz: You are not talking about a septic system.

Patzner: No, they want me to tie onto CBU, but there is no CBU to tie onto directly. So, I have a letter from CBU saying I have the right to tie onto Cardinal's Glen. But I still don't have the way

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to get there yet.

Guerrettaz: How far along are you? You have Smith Brehob.

Patzner: Smith Brehob has pretty much done the whole site plan. It is just that we are dealing with utilities to get it finalized. Taylor Bruce is doing the architectural buildings. I had him stop because if I need to stop in the next month or so I am going to find out if I can do this sewer system. If I can't then it's going to be a storage building and I have to find another piece of property for my business.

Guerrettaz: When I read through the packet I am trying to see how far along you got or if we are just kind of treading water here as we go. A huge contractor like Smith Brehob and they have done the site plan and they have done the site engineering.

Patzner: Correct.

Guerrettaz: Taylor Bruce has developed a plan and they are going to develop the plan for you.

Patzner: They already designed because of the firewalls and the rating we have to do block walls all the way up, so I mean, a lot of this stuff is designed and ready to go but I can't spend any more money on designing if I know I can't build it. Without the septic system in line knowing that I can do it, right now all of the architectural stuff is on hold except for Smith Brehob for the simple fact that they are going to work with the neighbors to see if I can get an easement going up to Cardinal's Glen.

Guerrettaz: So you site plan status, have they done any grading plan?

Patzner: Yeah, they have all of the grading plans, the building is all laid out. The water is good, it's just the only hiccup that we are having right now is because we wanted to tie onto the neighbor to the north on his private line. But CBU shot it down. We tried to use the easement of the Highway Department and they shot it down. So now I have to individually go through every personal property to get to Cardinals' Glen.

Guerrettaz: I don't mean to get in the weeds by talking about the other property but I know that he made the commitment to jump off this property to go onto the other property, so I was really curious how far long it was on the plan for the other. So, you thought whenever you started putting the business in the building over on Old 37 that you are not committed to.

Patzner: Correct.

Guerrettaz: You thought that you were going to be further along in this process and you can still very potentially by December.

Patzner: I am really hoping, I mean grant it, I am not used to how things go around here. It has been really a tough go and I am still really hoping that I can be out by December. Realistically it's all going to be up to now it's all about if I can get the right-of-way, the easement to the north, 4



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properties to get to Cardinal's Glen.

Clements: What is your plan if you don't receive approval for your request for easements from those 4 property owners?

Patzner: So, then 2<sup>nd</sup> phase is to go back to rezoning and get approval for septic system. If that fails again, then I am pretty much going to shut the doors down, buy a piece of property somewhere else and build again. So, either, like my other option is either I buy another 5 acres put my house on it and then build my auxiliary building. I don't know or I kick my renters out and I use that home as a residence. Then it would be a home residence. I really don't know how all of that works but my real goal is to move into that building or buy a secondary building. That building doesn't work for me anymore. It's too small already.

Clements: I have 2 questions for staff. One is can we give a temporary approval or an approval with an end date, like the end date of next year? Or a temporary Use Variance?

Nester: No.

Wilson: The Use Variance is for a different property. It's not the property he is talking about with sewer. It's for a property in which he got a residential storage structure permit and he put a business in.

Clements: Right.

Nester: The last time we had asked that same question and Dave suggested that you just continue it, because then you don't make a decision on it and that's why we came from January to July BZA.

Clements: I see and then secondly I don't recall of the facts even though I read through the packet and I remember when you came before us before. I forget if there were any neighbor complaints.

Nester: No.

Clements: I would like to continue it. You are a small business and nobody is complaining. He is not really hurting anybody. I don't want to approve it because your intentions...

Patzner: I intend to move out of there.

Clements: You intend to move out but it's a company and it may not work out. Your best intentions may not work out, so can we continue this?

Guerrettaz: What happens if we vote to deny tonight, then what happens to his business use?

Wilson: Well, it would go onto our enforcement docket because basically when someone does a use that is illegal, we give them the option to seek a Use Variance. Ok, as one way of coming into compliance because if you grant a Use Variance the lot is in compliance. If you continue it, in

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effect it will just continue our enforcement efforts. Frankly, we don't have time to go after everybody who was going to get a variance anyway or it's going to be remedied at some point.

Clements: Right.

Guerrettaz: This evenings meeting is really kind of a check in any way to make sure, and that's why I went so far into the 5 acres I wanted to understand what the status was for checking in and seeing how he was moving along.

Schilling: I don't think you need to take.....

Wilson: The rezone is for 5 acres, ok, for Light Industrial and the Plan Commission and the Commissioners put a condition on it that will rezone to Light Industrial but 5 acres on that location we want to be on sewer, which is somewhat logical.

Schilling: I think the staff report notes that this was continued to December with the July check in, so you really don't have to take any action today to keep it going.

Guerrettaz: I think my questions were going to, you know, I am thinking ok tomorrow all of the easements are signed for the sewer. Let's just live in a fictitious world here for a minute. They are all signed and he can get a site plan approval with edits and changes in probably a month in a perfect world. Then he has got to get a Building Permit through the state and then he has got to get contractors and get this in building. Regardless of what the intentions of the petitioner are I think it's going to be hard for him to have a site approved, erected and everything before December, which is what I think you said a few minutes ago.

Patzner: I have the contractors all lined up. I have been working on this for a while. I have the building, you know, everything ready. The guys are from Kentucky. They will have the building built in two weeks. The concrete will be poured one week after. As soon as that is done, I frame the offices and I can move everything. It is not, I mean, the moving in process is going to be a very short process. I just can't get to the approval stage without the sewer system.

Guerrettaz: As far as no action my opinion is we can handle that. But I just wanted, I think you need to be in contact with staff and your engineer probably has to be in contact with staff to understand how this permitting and how the actual getting everything constructed, approved, you know, the force main, I am guess for him to get occupancy he is going to have to have the force main connected. Am I correct on that?

Patzner: Correct.

Guerrettaz: The only reason why I am bringing all of this up is I think there has to be a conscious understanding what it means when December comes and what happens.

Patzner: Like I said, if I don't get anything done with the septic system in 3 months, that's going to put me to buying another piece of property.

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Guerrettaz: Ok.

Patzner: So, I am going to be, it's not that I, the building is not going to be used any more past December unless I come with a new building I come up with some hiccup but it should be pre-existing or something. In 3 months I planning on either find out a solution to the 5 acres that I am on or I am going to have to start looking for another site to build on.

Guerrettaz: I am thrilled for your success, personally. I really am.

Clements: Me too and I think this is a small thing that we can do to help you make it. So, I just wish you the best of luck and I would like to just continue it.

Kaczmarczyk: Continue it till December. Can we do that Larry?

Guerrettaz: Do we have to continue it? This was just a check in.

Wilson: I would ask legal.

Schilling: The staff report says it was continued to December 4<sup>th</sup> with a July check in.

Guerrettaz: So, this is just dialogue.

Kaczmarczyk: Good luck getting your service.

Clements: Thank you for coming before us.

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

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

**REMONSTRATORS – 1812-VAR-40 – Patzner: None**

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

**FURTHER QUESTIONS FOR STAFF – 1812-VAR-40 – Patzner: None**

**No motion was needed for case 1812-VAR-40, Patzner General Contractor Use Variance to Chapter 802, as this was just a check in. Case will be heard for a final time in December.**

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**NEW BUSINESS**

**1. 1904-VAR-22**

**Beargie Front Yard Setback Variance to Chapter 804**

**2. 1904-VAR-23**

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

One (1) 0.92 +/- acre parcel in Washington Township, Section 16 at 505 E Chambers Pike. **Zoned AG/RR.**

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

**STAFF ACTION:** Petition was continued by the petitioner.

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**NEW BUSINESS**

**3. 1905-VAR-29 Moore Front Yard Setback Variance to Chapter 804**

One (1) 3.25 +/- acre parcel in Perry Township, Section 32 at 6000 S Empire RD. **Zoned AG/RR.**

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

**STAFF ACTION:**

Behrman: This is New Business and this is for variance 1905-VAR-29, Moore Front Yard Setback Variance to Chapter 804. It is one 3.25 acre parcel in Perry Township, Section 32 at 6000 South Empire Road. It is currently zoned Agricultural/Rural Reserve. So, this is the location on 6000 South Empire Road. It is actually a corner lot so it intersects with East Dillman Road as well. The zoning here, there is a lot of zoning going on but its Agricultural/Rural Reserve, including the lot just to the south and there is kind of a mix of Business, Residential and Agricultural in this area. The Comprehensive Plan lists this as Rural Transition. The site plans are that the home is in the upper northeast corner of the lot and then they have a detached garage that is very close to Empire Road, an additional garage that is close to the southern lot line that I think technically belongs to the lot to the south. They are wanting to eventually do a lot line shift, a final plat amendment to amend that southern lot line. In the northern part of the lot right in the center we have a pole barn that was constructed without a permit. This was sometime between 2011 and 2013, according to aerial photographs. I have some lines that are on there that I will maybe describe later but I just wanted to throw out the general site conditions there and the drainage is to the south and west. This is the slope map of the area. There is kind of a mix of slopes less than 15 percent and greater than 15 percent on the lot. These are some of the photos. The upper left has the barn with a little star on it to designate it and that is showing how close it is to West Dillman Road. In the upper right picture you see the pole barn in the background and they have attached one of those car ports, well, it's not attached but they have added a carport to the site. It will need a permit also. But there is a blue dash line and the owner was explaining that there is a water line that runs through their property that kind of determined where their pole barn originally was going to go. The bottom picture is again West Dillman Road facing east. These are some of the other site photos. In the upper right you see the barn in the background with a red star and then the carport that needs a permit. The bottom is the general area of the, I am facing west standing on South Empire Road getting that shot. They did have a detailed engineered site plan drawn up of the property and originally this was brought to us as a design to do a lot line shift on the plat but when we do our reviews we make sure everything is up to par with permits and whatnot. That is when we noticed that the blue pole barn did not have a permit and it definitely does not meet any of the setback requirements. The yellow designates the septic system and again I put that dash line as kind of a guestimate as to where there is a water line that services a mobile home to the southwest. We get into some interesting history of Dillman Road right-of-way at this point and time and I tried to make a table that can kind of explain the history. In 1995 there was a thoroughfare plan adopted by the county and it made Dillman Road a local road, which required a 25' foot right-of-way dedication. In 1996, we had a 2 lot minor subdivision occur, the Duncan Subdivision was platted and they actually dedicated a 25' foot right-of-way on the plat. There is a plat and I have this photo here, it's in one of the exhibits in the back and it does show on this Duncan plat that there was a 25' foot right-of-way dedicated. It shows that there is a 25' foot setback from Dillman Road also the petitioner did sign this plat as well. So, they had a document that had been signed that was not

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referred to when they were putting this pole barn on the property. The pole barn was added sometime between around 2010 and they should have been able to use the 25' foot right-of-way dedication. They were only 18.5' feet from the right-of-way, so they did not meet the 25' foot setback requirement. Then just pretty recently in December of 2018 the county adopted a new thoroughfare plan. This reclassified Dillman as a minor collector and they are still able at this point and time to use the 25' foot right-of-way dedication, however because of that classification for a minor collector they need to use a 35' foot setback. If they applied for a permit today they need to meet the 35' foot setback. What we see up at the top if they walked in to get this pole barn permitted at this point and time, they were need to be 35' feet off of their dedicated 25' foot right-of-way to get a permit for the pole barn. That is what they are seeking today is a Front Setback Variance. I was going through the findings of fact and I did look at the character of the area, so along this stretch of Dillman Road, technically they should be at least 50' feet from the center line if not 60' feet from the center line. You see the character of the area that many of these older structures that are grandfathered in do not meet those standards for Dillman Road. In fact the structure that is shown to be 56' off from the center line of the road that is the home, which is compliant until the thoroughfare plan, it's still grandfathered in but if they should ever want to add a porch or change something on the outside of the house it is a nonconforming structure at this point, pre-existing nonconforming. I did look at the character of the area and I did speak with the Highway Department. The engineer, let me read this off directly, the Highway Department is agreeable to a 25' foot dedicated right-of-way that is shown as part of the original plat. The barn located close to the road will not interfere with the roadway maintenance or roadway improvements and they don't have any short or long-term improvements planned for this part of Dillman Road corridor. He did go on to mention that some of the plans that they do have for some of this surrounding intersections to make them safer in the future. They did not consider that the pole barn being this close was a safety issue. We were able to get approval on all of the findings except for finding C for the pole barn, which is the hardship, basically a self-created hardship. The plat was not referred to, they built without a permit, there are other locations that they could move this structure and build it someplace else. So, it will be up to you to decide how to do this. I have a small error on my slide presentation. I only mentioned part of the recommended motion. Staff recommends to deny the design standards variance to the Front Yard Setback for the pole barn, based on the findings of fact, specifically finding C. We are also asking that we approve the design standards variance to the Front Yard Setback for the residence due to the findings of fact with the following one conditions;

- 1) To obtain a permit for the carport of remove it from the premises by August 15, 2019.

We feel like because of that thoroughfare plan when it passed in December and now has this new classification of roadway has now made the home a nonconforming structure. We would like to see the 4' foot front yard setback, at least for the home and the pole barn we are going to deny at this time. Any questions?

**RECOMMENDED MOTIONS:**

**Deny** the design standards variance to the Front Yard Setback for the pole barn standard based on the findings of fact specifically Finding C.

**Approve** the design standards variance to the Front Yard Setback for the residence due to the findings of fact with the following one conditions:

1. Obtain a permit for the car port or remove from the premises by August 15, 2019.

**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:**

- Approval of the design standards variances from the front setback would allow for the petitioner to obtain a permit for a 30'x42 pole barn built between 2011 and 2013;
- There are no natural or scenic areas adjacent or near to the petition site;
- There are no known karst features on the site;
- The nearest FEMA floodplain is over 900 ft to the north known as Clear Creek;
- 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);
- Per the Highway Department Engineer comments (Exhibit 4):
  - The Highway Department is agreeable to the 25 ft. dedicated right of way that is shown as part of the original plat. The barn located close to the road will not interfere with roadway maintenance or roadway improvement plans.
  - The Highway Department does not have any short term or long term improvement plans for the part of the Dillman Road corridor along this property.
  - Dillman Road is an important east-west roadway that connects Fairfax Road to Old SR 37 and SR 37 and is therefore classified as a minor collector.
  - INDOT has plans to install a J-Turn intersection treatment at the intersection of Dillman Road and SR 37 to improve the safety at this location.
  - The Highway Department would eventually like to make intersection improvements to Dillman Road and Old SR 37 to provide left turn lanes on Old SR 37 and to improve the grade of the eastbound approach.
    - 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 Agriculture Rural Reserve (AG/RR);
- The lot to the south is zoned AG/RR as is much of the surrounding area to the north, east and south;
  - The zones Pre-existing Business (PB), Estate Residential (ER) and an undeveloped PUD are immediately adjacent to the petition site;
  - The pole barn and the residence meet all other design standards for the AG/RR zone;
  - The residence was built in 1910;
  - In 1,000 linear feet, five out of five structures along E Dillman Road within the same block do not meet the front yard setback requirements and average a 3.5' setback from a 25' right of way;
  - The petitioner's home is 31' from a 25' right of way and encroaches 4' in to the front yard setback;
  - The petitioner's unpermitted barn is 18.5' from a 25' right of way and encroaches 16.5' into the front yard setback;
  - The Comprehensive Plan designates this area a Rural Transition and acknowledges limited sewer installation, upgrades to communication facilities and other infrastructure;
  - The Monroe County Transportation Alternatives Plan from 2018 lists Dillman Road as a Moderate Priority Road Improvements;
  - 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);
- There is a waterline that runs adjacent to the pole barn that was originally damaged during the placement of the structure. The waterline services a mobile home southwest of the property and is not in an easement. The current location of the unpermitted pole barn is partially due to the avoidance of the waterline;
  - A new, unpermitted carport is located over the top of the waterline and just south of the pole barn;
  - The property drains to the west;
  - 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 for the pole barn and neither the County nor the recorded plat were consulted when locating the structure;
- Relocation of the pole barn structure on the lot would alleviate the need for a variance;
- There are other areas on the petition site that can accommodate the pole barn that meet Chapter 804 Buildable Area requirements;
- The residence was built in 1910 and was recently re-classified as pre-existing non-conforming due to the re-classification of E Dillman RD from local to minor collector and has 4' front yard setback encroachment;
- There would be a practical difficulty in relocating the residence that has been in the present location for over a century;

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.

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

**QUESTIONS FOR STAFF – 1905-VAR-29 – Moore**

Clements: That was a very thorough presentation with a lot of historical knowledge, so thank you.

Kaczmarczyk: Thank you Tammy. Would the petitioner like to speak? Is the petitioner here?

Behrman: Teresia is here.

**PETITIONER/PETITIONER’S REPRESENTATIVE – 1905-VAR-29 – Moore**

Kaczmarczyk: If you could sign in, please. Please state your name for the record.

Moore: My name is Teresia Moore.

Kaczmarczyk: Please raise your hand.

Moore: Pardon me?

Kaczmarczyk: Please raise your right hand. Do you swear to tell the truth and nothing but the truth?

Moore: Yes.

Kaczmarczyk: Thank you.

Moore: Ok, I am here to request a Front Yard Setback Variance for an existing pole barn. 8 years ago my father passed away and my husband and I moved in my family home that was left to me. We had 2 horses, so we needed a barn and a tack room that was large enough to store hay for the winter. My husband and a few of his friends got together to build this pole barn. He thought he had measured correctly, evidently not. We also noted that where he built we were over further than the neighbor’s outbuilding. We were further from the road and we had gone as far south with the building as possible to keep from going over a waterline that goes to a mobile home on Old 37. The pole barn isn’t wired. It’s not plumbed. It has a gravel and dirt floor. We no longer have horses so the stalls have now been removed and we use it to store a motorcycle trailer and a tractor, lawnmowers and various things.

Kaczmarczyk: Any questions for the petitioner?

Guerrettaz: Just to confirm the pole barn was built without a permit?

Moore: Correct.

Guerrettaz: What did you say is south of the pole barn? Is there water?

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Moore: Waterline runs through the property down to a mobile home that is on State Road 37. In fact, it's a rental property that we own.

Behrman: I think your husband said when they were trying to put the pole barn on that he nicked that line and had to do a big repair on it.

Moore: We had them come and mark the utilities but they missed that. So we had that repaired and then had to move the barn a little bit back to get away from the waterline.

Guerrettaz: What is the blue line?

Behrman: I estimated from a conversation I had in the field where that waterline runs.

Guerrettaz: Where is water, so if you hit it when you dug it, you physically...

Moore: We started to dig that corner post, the hole whatever and hit the waterline because they had not located it correctly.

Guerrettaz: How far did you move the building?

Moore: I can't say for sure. It would be pure guess work. After they repaired it I know that they changed where they were going to build it. It seems like it was 5' feet away from the waterlines and I am guessing. But we definitely didn't want to set the barn over the waterline.

Guerrettaz: If the building was back 6 and half feet, 43 and half to 50 from the center line of the road would that meet the setback distance for, it wouldn't meet for the new thoroughfare plan setback but it meet it for the 25' foot dedicated.

Behrman: Maybe and I can't speculate like which direction the barn moved when they did hit the line and we do see that there are some areas that are flat, that are just sort of west and south a little bit that would meet all of the buildable area criteria and probably still miss the waterline.

Guerrettaz: What I am getting at is I am wondering if they had kept the building in the same location as it started out when it hit the waterline, would it have met the 50' foot distance?

Behrman: I don't know.

Guerrettaz: If it was 6 and half feet out. Do you see what I am asking? I am just wondering if 50' feet from the center of Dillman, where would that put it in relationship to the 25' foot dedication.

Behrman: It is 18.5' feet. 18.5' plus 6.5'. I don't do math in my head. It is possible. Had the waterline not been an issue they might had met that setback. I do understand that she had said they had looked around the surrounding area and had looked at some of the other structures and they were farther back than any of those. So, I can understand that reasoning, thinking you are far back enough because you are farther back than anyone else. But there was a plat with the setbacks spelled out on it.

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Kaczmarczyk: Any more questions for the petition? Anybody here to speak on behalf of the petitioner? I am sorry, you can sit down now, ma'am. Thank you. I am sorry did you have something to add.

Moore: No.

Kaczmarczyk: Alright, thank you ma'am. Anyone here wish to speak on behalf of the petitioner? Anybody here wish to speak against the petitioner? Seeing none. I will entertain a motion.

**SUPPORTERS – 1905-VAR-29 – Moore: None**

**FURTHER SUPPORTERS – 1905-VAR-29 – Moore: None**

**REMONSTRATORS – 1905-VAR-29 – Moore: None**

**ADDITIONAL QUESTIONS FOR STAFF – 1905-VAR-29 – Moore: None**

**FURTHER QUESTIONS FOR STAFF – 1905-VAR-29 - Moore**

Clements: It is really hard to go against the staff recommendation and the staff recommend denying this along with approving the setback for the house structure. I don't know what are you thinking about this, my other 2 colleagues?

Guerrettaz: I am looking at C and I understand what I think Tammy kind of helped us reason through some of the issues with what the petitioner did with the fact that the locality of the surrounding buildings is very near or less than what the pole barn is. They did hit the waterline so instead of moving it farther back they moved it north and from what the petitioner said they did that thinking based on where the other buildings were at. So I think that the waterline may be a practical difficulty that was out of their control.

Kaczmarczyk: I concur.

Guerrettaz: I can make a motion to approve the variance. It is a very built-up situation, the house being over the front yard and the house predates anything that has been done. So, I am going to go ahead and make a motion. **In case number 1905-VAR-29, Front Yard Setback to Chapter 804, I move that we approve the design standards variance to the Front Yard Setback for the Residence due to the findings of fact and the one condition that they must obtain a permit for the carport or remove it from the premises by August 15, 2019.** Would you like to have a determination of which one that is or are you happy to work with the petitioner on whether they move it or obtain a permit?

Behrman: I am pretty certain they can get a permit. I think they can get a permit for it.

Guerrettaz: So, I will just leave it as you have it in the report, that they obtain a permit for the carport or remove it from the premises by August 15, 2019 and that way if they decide they can remove it they are not tied into getting a permit.

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Behrman: Correct.

Guerrettaz: **In the matter of design standards variance for the Front Yard Setback for the Pole Barn, I move that we grant that variance, based on the fact that I think site conditions, utilities and the surround area were a condition that was a practical difficulty that was not self-inflicted.**

Clements: I **second** the motion.

Kaczmarczyk: Larry, call the roll, please.

Wilson: The vote is on petition 1905-VAR-29, Moore Front Yard Setback and Moore Rear Yard Setback. The motion is to approve both variances.

Behrman: With the 1 condition.

Wilson: With the 1 condition set forth in the report and included in the motion. Margaret Clements?

Clements: Yes.

Wilson: Bernie Guerrettaz?

Guerrettaz: Yes.

Wilson: Mary Beth Kaczmarczyk?

Kaczmarczyk: Yes.

Wilson: Motion carries 3 to 0 for both variances with the condition.

**The motion in case 1905-VAR-29, Moore Front Yard Setback Variance to Chapter 804, in favor of approving the variances, with the amended findings and condition attached to the motion, carried unanimously (3-0).**

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**NEW BUSINESS**

**4. 1906-VAR-30**

**Smith Rear Yard Setback Variance to Chapter 804**

One (1) 1.64 +/- acre parcel in Perry Township, Section 1 at 4559 E Lampkins Ridge Rd. **Zoned ER.**

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

**STAFF ACTION:**

Behrman: I am going to present this one. Anne Crecelius is in San Francisco at a training conference.

Wilson: San Diego.

Behrman: San Diego, sorry. National ESRI Conference.

Wilson: It is the National Conference for GIS, sponsored by ESRI, which is the company. It is a cool conference so we expect for her to come back with cardinal amounts of information.

Behrman: So, I am filling in for this one and I just found out today that I was going to do that. I have a little bit of background with the site. This is the variance 1906-VAR-30, it's the Smith Rear Yard Setback Variance to Chapter 804. It is one lot that is 1.64 acres in Perry Township, Section 1 at 4559 Lampkins Ridge Road. It is zoned Estate Residential. This is the location. It is pretty close to the City of Bloomington jurisdiction. This is the zoning, so I will say I participated in a rezone for this property in 2015. The Eastview Church of Nazarene rezoned the church and 2 other lots so they could adjust the lot lines in a Type "E" Subdivision. This used to be a split zone lot of RE1 and RE2.5 zoning, which required pretty hefty setbacks. But now it has been reconfigured and gets to utilize the Estate Residential, ER design standards. It is also partially in ECO Area 3 watershed but the lot is fairly flat, which you will see. The Comprehensive Plan is Rural Transition and these are some of the site conditions. There are 2 red dots on this site here. One of those was a detached garage and the other one was the home that was originally there in the southwest corner. Those were demolished in 2016. The petitioners came in to request a 2,160' square foot garage aerial which does not show up on this particular photo. We will see those on the photos. In Estate Residential zoning you are limited to having an 875' square foot accessory storage structure unless you have a home on the property. So, their 2,160' square foot structure was not permitted. In order to get around that they attached a 480' square foot residence to this pole barn, to say that that was the residence to allow for them to get the size of structure that they wanted on the lot. Now, they are coming back and asking for an actual residence, which would maybe then have to decommission the other residence in the pole barn. But they need a variance from the Rear Yard Setback to make that happen. These are the slope conditions. It's all less than 15 percent slopes and this is a site map that was provided by the petitioner. Anne did some enhancement to it to kind of help clarify. She has got an arrow at the top there that is pointing to the proposed home and there is a very large silver maple tree in the middle of the property that is the significant reason why they are asking for the Rear Setback Variance to preserve this silver maple tree. She has got an arrow that points to the 2,100' square foot pole barn plus the 480' square foot residence that is attached to the north of it, on the north end of it. These are some of the photos. This is on the

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western lot line. There is this really neat old barn that they left standing that is demarked as number 4 on the site plan. This is their 2,100' square foot garage. The property report card says it's an attached garage and the residence is the 480' square foot on the left hand side of it. One thing too is that we will see that there is a driveway here in this photo that they were given a Driveway Permit to add this driveway to lot, but there was a very specific condition that they remove the driveway to the west, which is this driveway. This driveway is still here, so this will have to be removed at some point in time, per the Highway Department. Then we have an image of the tree. We are facing west and the home would go on the right hand side of this photo here. This is the silver map tree. Anne put a little piece of paper there for scale. It is just a regular piece of office paper. This is the petitioner's letter which is in the packet. The recommended motion is to deny the design standards variance to Rear Yard Setback standard in Chapter 804 of the Monroe County Zoning Ordinance, based on the findings of fact, specifically finding A3 and finding C. This would be a 20' foot encroachment into a 35' foot setback. It would not impair the stability of a natural area or scenic area, so it was denied on that, oh I am sorry, finding 3, the character of the area finding and then the other one was the hardship. Because staff kind of felt like had they planned their detached garage and other residence and the home at the same time they maybe could have avoided some of the conflict and still maybe be able to save the silver maple tree. I think there should have been room to fit everything on this 1.64 acre lot. That was one of the reasons why there was a denial.

**RECOMMENDED MOTION:**

**Deny** the Design Standard Variance to the Rear Yard Setback standard in Chapter 804 of the Monroe County Zoning Ordinance based on the findings of fact, specifically A (3) and C.

**FINDINGS OF FACT: Rear 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:**

- Approval of the variance would allow the petitioner to preserve an established silver maple tree
- Approval of the variance would allow the petitioner to propose construction of a 3700 sf Single Family Residence that encroaches into 20' into the rear setback;
- The petition site is zoned Estate Residential (ER) and rear yard setbacks minimum is 35';
- The petition site is 1.64 acres;
- The parcel was platted through the 2015 Eastview Church of the Nazarene Type E Subdivision;
- The encroached property boundary to the north is owned by Eastview Church Of The Nazarene;
- The lot is partially within the Environmental Constraints Overlay Area 3;
- There is no known karst on the property;

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- There parcel is not located within the floodplain;
- There is no evidence that the building would obstruct a natural or scenic view;
- Conclusion: It would not impair the stability of a natural or scenic area.

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

### Findings:

- See findings under A (1);
- Approval of the variance allow the petitioner to propose construction of a SFR that is located within the rear setback;
- The distance of encroachment requested is 20', creating a rear yard setback of 15';
- The parcel is addressed off of E Lampkins Ridge Road, a Local Road (50');
- A 25' Right-of-Way was dedicated with the 2015 subdivision;
- The septic system is located south west of the proposed new SFR and would not interfere with the proposed location of the proposed development;
- The issued 2017 driveway permit requires the western driveway to be commissioned;
- 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);
- Surrounding use is primarily residential and agricultural;
- The surrounding residential zones are ER, RE1, and RE2.5;
- The Eastview Church of the Nazarene was rezoned in 2014 to the ER zone in order to allow the Church to subdivide and sell lot 3 as a financial asset;
- The former zoning of the property was RE1 and RE2.5, which have minimum rear setbacks of 50' and 60';
- Conclusion: The character of the property included in the variance would be altered in a manner that substantially departs from the characteristics sought to be achieved and maintained within the relevant zoning district.

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

### Findings:

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



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

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

**Findings:**

- See findings under A (1);
- Nearby uses are primarily residential and agricultural;
- 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 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 (1);
- There is not floodplain on site;
- The site is located within the Environmental Constraints Overlay Area 3.
- The site is less than 15% and 18% slope;
- Stormwater runoff drains in the west – south west direction;
- 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);
- The site already contains a permitted Single Family Residence;
- This Design Standards Variance request is not required for the construction of a new structure on this property;
- The proposed new SFR plans and location could be modified to satisfy the minimum rear

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- yard setback of 35’;
- The proposed new SFR plans and location could be modified to protect the Silver Maple tree;
- The strict application of the ordinance doesn’t hinder the petitioner to further develop their lot;
- At the time of construction of the 2160 sf accessory structure with a 480 sf living space to count as a SFR, a future home location could have been planned;
- Any practical difficulties in utilizing the lot were self-created;

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 – 1906-VAR-30 - Smith**

Kaczmarczyk: Any questions for staff? Would the petitioner like to speak? Come on up and sign in.

**PETITIONER/PETITIONER’S REPRESENTATIVE – 1906-VAR-30 - Smith**

Kaczmarczyk: Please state your name.

Smith: Jeff Smith.

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

Smith: I do.

Kaczmarczyk: Thank you, sir.

Smith: Ok, yeah I don’t know in my mind it’s a simple request. When she said to plan out the house and stuff I kind of did and that why the barn sets up front and the house would be in the back. We put in a new septic system for a new house and all of that. What we weren’t aware of until I had an arborist come out is that you have got to stay completely out of the drip line of a tree or he said it will kill it or definitely damage it. The setback, I don’t know that I need just a 15’ foot setback, maybe a 20’ feet. I mean we have never staked the house out but we do know the current plan that we have will encroach into that tree drip line if we stay with the 35’ foot setback. If we stay with the 35’ foot setback it only leaves us like 25’ feet in between the drip line and the setback and he even warned us against even stop concrete block or any kind of construction traffic over

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that area. If we would have known that, well, that is still the right place to put the house aesthetically and how it all works with the new driveway and it will go just past the new barn. Hopefully, if everything goes right this will be the last house I have to build because we are wanting to do a single level home for our retirement home, if you will. It doesn't make sense for use to squeeze everything in and go up two stories for that. Like I said it's really the perfect place to put it on the lot to be aesthetically nice and just to keep it beautiful around there.

Kaczmarczyk: Thank you sir. Any questions for the petitioner?

Guerrettaz: Would you go back to the aerial, Tammy?

Behrman: The aerial. Hold on, let me think.

Guerrettaz: This one. Where is the tree at?

Smith: (Inaudible) we have never had mature trees on property. We have always had to plant them, so we hate to lose it.

Guerrettaz: Looking at the Exhibit on 56, there is a bump out to the east when the site plan is, yeah, so that bump out to the east is that now part of this property?

Smith: It is.

Behrman: That is part of the property.

Guerrettaz: It looks like based on the aerial.

Behrman: The zoning map shows it pretty clearly.

Guerrettaz: You weren't a part of, Mr. Smith if you weren't a part of the Nazarene Type "E"?

Smith: I was not.

Behrman: They purposely rerouted all of those lots so that they could sell this one off for some assets.

Smith: It was purchased before us and I guess the lady who purchased it had plans on rebuilding there and maybe lost her job and got a little spooked. Any who she resold it. Another lady was supposed to buy it and they wouldn't let her reuse the septic system that was there which didn't make sense. So, we went ahead permitted for a 4 bedroom septic.

Guerrettaz: So, where you are showing the proposed single-family residential is where the ordinance says it should be?

Smith: That is.

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Guerrettaz: You are wanting to move it north to where the proposed setback line is.

Smith: Correct which is a big empty field that the Nazarene Church owns and I have talked to the pastor before and now. I don't know if I asked the present one but the one before they had no plans for it or but they don't want to sell it. I mean I asked them if they would be willing to sell it and there is, you know, trust me we don't want to build it 15' feet from the fence anyhow. But I just don't want to lose that tree. It doesn't work to shift one way or the other.

Guerrettaz: That is what I was going to ask. Why doesn't it work to shift it to the east? That would at least eliminate the encroachment on the drip line and to the north/south.

Smith: 15' foot side yard of this property then I am still going with this part of the house. (Inaudible) If I wouldn't have had an arborist come out and check on it I would have probably lost that beautiful tree.

Guerrettaz: What did the arborist say about the health of the silver maple?

Smith: He didn't say anything about it being bad. He was very enatic about staying out of it with construction traffic. I was all unaware of that because he talks about the root systems being more than 6 inches below the ground in a lot of areas and I was like, the last thing I want to do is loss it. Like I said, you know, I mean a 20' foot setback may work for us. I just petitioner for a 15' foot because that is what a side yard setback is and if you are allowed to build 15' feet beside somebody I was thinking a 15' foot would work for a rear also, just as a variance.

Clements: The thing that bothers me about it is that there have been a couple of different iterations about the intended use and some kind of working around the proper planning process and so that is something that kind of bothers me. I don't know.

Smith: I went to the Planning office with all of this and I did exactly what they said. I wasn't trying to skirt the rules or anything. They told me what I needed to do to be able to put my garage on there that I knew that I wanted and we had sold our other houses that I had a garage. So, I had all of this stuff to put somewhere So, I am like, well, we are going to eventually build out here what do I need to do? They said you have to have a residence. I went through all of the tape and did everything exactly like Planning did. I didn't try to pull anything over anybody on that.

Kaczmarczyk: Any further questions for the petitioner? Thank you. Would anyone like to speak on behalf of the petitioner? Seeing none. Anybody here to speak against the petitioner? Seeing none. Any questions for staff?

Clements: I don't think I have any.

**SUPPORTERS – 1906-VAR-30 – Smith: None**

**FURTHER SUPPORTERS – 1906-VAR-30 – Smith: None**

**REMONSTRATORS – 1906-VAR-30 – Smith: None**

**DRAFT**

**ADDITIONAL QUESTIONS FOR STAFF –1906-VAR-30 – Smith**

Guerrettaz: I guess I would like to see and I don't like moving things down the road but since the petitioner is, I think we need to know what that distance is. If the arborist, I mean, if 20' feet works I think we should look at assessing it as 20' feet. Instead of just saying, well, we decided to go 15' feet.

Kaczmarczyk: Shall we get something from the arborist?

Guerrettaz: Well, I think there ought to be something because we are relying on what the arborist is saying for the outline and if we are going to use that as part of our determination then I think you should know the number. I really don't like kicking the can down the road.

Kaczmarczyk: Is there any way we could continue this?

Guerrettaz: I am not going to make a motion to deny or approve the variance. I will just say that.

Clements: Right and I feel the same way so I am going with the staff recommendation to deny it. As it stands that is the way I think it should be. Was it previously a business on that property and then they were required to put on a residence, is that it?

Behrman: No. He came in wanting to have a very specific sized accessory structure and that size is not permitted in that zone without a residence. So, they got the idea of tacking on the most bare minimum residence that you could to that structure to allow them to have this large garage. They met the permit, we were able to issue it for a structure that size because of the 480' square foot residential portion that was attached to it.

Kaczmarczyk: So, the permit for that structure there was no problem issuing it because they did have the residence attached to it?

Behrman: Yes and it met all of the other design standards for setbacks, minimum lot size and everything.

Guerrettaz: I would take exception to that because they followed the rules and everything.

Kaczmarczyk: Yeah, they followed the rules.

Guerrettaz: They added on to make it a residential structure for code and they were just going to convert that space back to something I guess in the garage is what I interpret.

Smith: She is the one that draws all of the houses and does all of the plans and she just informed me that 20' foot does work with the house setback. So, instead of what I initially did was just go with a 15' foot side yard setback and thinking no big deal. But she said 20' feet does work with the plan that we have drawn.

Kaczmarczyk: Do we want to continue this and have the arborist come in, a letter from the arborist?

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Guerrettaz: Yeah, I think that is the best opportunity for the petitioner. I don't know that is going to sway me one way or the other right now. Because it's not an existing structure. The ordinance says it's got to be that certain setback distance and I don't know that practical difficulty for that tree ids something that I would consider merits the variance. I mean, that is just kind of how I see it. My next question would be is there any way the Nazarene Church would amend that? You said they wouldn't sell it but would they amend that property line to not lose any property and give you the setback on the house and allow that setback from the new property line to be in place.

Smith: I have no idea.

Guerrettaz: There may be some other remedies out there that could maybe solve the problem.

Smith: I just hate to lose the tree and if we go with the 35' foot setback then I am afraid we will lose it, so I guess that is the reason I am here.

Kaczmarczyk: Do we want to entertain a motion or?

Clements: I am not going to make a motion on this. I am going to go with staff recommendation.

Kaczmarczyk: Can we continue this or?

Wilson: What you can do if you want to continue it to the next meeting is make a motion to continue it to the next meeting.

Guerrettaz: I understand. (Inaudible) instead of working around the tree, which is fine. I understand what they want. Ok, I will make a motion.

**FURTHER QUESTIONS FOR STAFF – 1906-VAR-30 - Smith**

Guerrettaz: **In the matter of 1906-VAR-30, Design Standards Variance to Chapter 4 804, Rear Yard Setback Standard, I move that we deny the variance based on the staff's recommendation and findings of fact.**

Clements: **Second.**

Kaczmarczyk: Call the roll, Larry.

Wilson: The motion is on petition 1906-VAR-30, Smith Rear Yard Setback. The motion is to deny the variance based upon the staff's recommendation. Bernie Guerrettaz?

Guerrettaz: Yes.

Wilson: Mary Beth Kaczmarczyk?

Kaczmarczyk: Yes.

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Wilson: Margaret Clements?

Clements: Yes.

Wilson: The variance is denied by a 3 to 0 vote.

**The motion in case 1906-VAR-30, Smith Rear Yard Setback Variance to Chapter 804, in favor of *denying* the variance, carried unanimously (3-0).**

**DRAFT**

**NEW BUSINESS**

**5. 1906-VAR-31**

**Rogers and Country Club Inc Sign Variance to Chapter 807**

**6. 1906-VAR-32**

**Rogers and Country Club Inc Landscaping Design Variance to Chapter 830**

One (1) 0.26 +/- acre parcel in Perry Township, Section 17 at 2801 S Rogers ST. **Zoned LB.**

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

**STAFF ACTION:**

Nester: The 2 variances are for a site located at 2801 South Rogers Street on the corner of South Rogers and West Country Club Road. The variances are for a sign, a digital sign and also the location of the sign as well as Landscaping Design Standards from the buffer yard requirement. The location here is very close to the City of Bloomington. The neighboring lot to east is City jurisdiction and across the street is also City jurisdiction. The current zoning here is Limited Business. The site was rezoned in 2018 from Commercial Arterial which is a Fringe zone to Limited Business, to allow for gasoline sales and convenience store use. The Comprehensive Plan has this as Mixed Residential and the site conditions, this is from 2016. This is the original site overview. Today it is under construction and the petitioner has received several variances to get it to where it is at now in order to build a convenience store with gas sales. Here is Alta Survey that they provided to us, just noting the site is a quarter of an acre. There is quite a lot going on in a small space. This is one of the approved plan sheet from the previous approval of the site plan. The building fronting Rogers and Country Club is 5' feet from the property line, so the petitioner is requesting that the sign there be a mount digital sign 5' feet from the property. Typically under Chapter 807 it is required that you have a 10' foot setback for all signs and digital signs are prohibited. That is why there is Part A and B in the staff report. The green box indicates the landscaping that the petitioner would like to avoid from planting for incase emergency vehicles need to go up on the curb to get around a parked car getting gasoline. I will go through these one at a time. First is the Sign Setback Variance, which is Part A. The red line here is showing you what 10' foot setback would look like. If the sign could meet the 10' foot setback it wouldn't need a variance but they are requesting it to be 5' feet so it's visible to customers driving by. The second part is that they would like it to be digital in order to display a gas price sign. This is the red line you can still see the sign will be completely in front of that and it will be 5' feet. So, each sign is about 45' square feet and a little under 5' square feet of that would be digital on both signs, which they are permitted to have that amount of sign, just the location and the fact that its digital is why we are here. They are also requesting a Bufferyard Variance so they can avoid planting those 3 trees and 2 shrubs. The green line that is on the eastern property, that is showing where the property line. The yellow line is actually where the petitioner has proposed a fence and that is a 10' foot distance between the green line and the yellow line. I think what happened was the City's requirement is that the fences be set back from the property. Our requirement does not have that setback. Upon the petitioner coming into the office and asking us about removing those trees, the first suggestion that staff made was to move the fence and amend the site plan so that you had an additional 10' feet. That bufferyard on that site is only 6' feet. Right now between the pump and the curb, you have 20.33' feet. If someone is parked there, which let's assume is 9' feet and someone else is trying to pass that other person, which could be another 9' feet you are left with



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2' feet between there and the curb. The emergency service vehicle I think on Google I looked it up and it's typically a 10 to 12' foot width, so if one car is there, it could get around, hopefully. This site is very tight. But if they did move that fence back and all of the landscaping back, they would gain 10 more feet. So, they would be 30' feet between the pump and the curb with a site plan amendment. In the orange highlighted area this is a petitioner submitted site plan, those are the 3 trees and the 2 shrubs that they would like to not plant. They will still have it be mulch and just bare, is what they are proposing. Like I said, that bufferyard is 6' feet. Here are some site photos of the site partially constructed. On the left hand side standing along Rogers viewing north toward the intersection, so the building is 5' feet from the property line. On the right hand side I am on the eastern property line facing north again, so the orange cones are representing the location of the canopy. On the left hand side just from another view from Country Club viewing south. The concrete squares and the cones onto of that I believe that is where the pumps will be located. The other cones further to the east won't have as I understand it a support structure to impede traffic. The support structures will be near where the pumps are, so there will be that flexibility. On the right hand side just viewing that in relation to where the building is located, so the canopy will actually touch the building. It will be connected and go over to the east. On the top left photo is showing you viewing south on Rogers, so that is where the sign would approximately be located. There is vegetation buffering from the neighboring residences to the south and then on the right you have where that truck is and there is a utility box would be where they are proposing to put the monument sign. All the landscaping that would be required would still need to be planted, just moved and we could do that administratively. On the right hand side there is also a residence next door, although that lot is zoned commercial. Here is a bird's eye view. The property is surrounded by a residential area. The recommended motion by staff is to deny the requests, based on the findings and specific to certain findings. For the first one for the, that should say, sorry that should say from the front setback for the sign requirement, the hardship piece about locating it within 10' feet was one of the difficulties and I should also mention that if this property was in the City of Bloomington, their setback would be 2' feet. I confirmed that with the City, but ours is 10. The design standards variance for the Changeable Copy Digital, we are also recommending denial on that as well, based on character of the area. The last one, the Landscaping, C the hardship they could move the fence 10' feet to the east to give themselves an additional area for emergency vehicles to access the site and still be able to plant those trees and shrubs. I will take any questions.

**RECOMMENDED MOTION:**

**1906-VAR-31: (A) DENY** the Design Standards Variance from the front setback for the sign requirements in Chapter 807 of the Monroe County Zoning Ordinance, based on the findings of fact, specifically (A)3 and C.

**1906-VAR-31: (B) DENY** the Design Standards Variance for the changeable copy (digital) sign requirement in Chapter 807 of the Monroe County Zoning Ordinance, based on the findings of fact, specifically under (A)3.

**1906-VAR-32: DENY** the Design Standards Variance for the bufferyard landscaping requirements in Chapter 830-7 and 830-9 of the Monroe County Zoning Ordinance, based on the findings of fact, specifically under C.

**FINDINGS OF FACT – 1906-VAR-31 – SIGN REQUIREMENTS:**

**(A) Minimum 10’ Front Setback for Signage**

**(B) Prohibition of Changeable (Digital) Copy**

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

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

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

**Findings:**

- The petitioner is asking for two variances from Chapter 807: (A) Minimum 10’ front setback for signage & (B) Prohibition of changeable (digital) copy;
- A: The petitioner is requesting to place a two signs 5 feet from the right-of-way of Rogers and Country Club instead of the required 10 feet;
- B: The petitioner is requesting that both signs be digital to display gas prices;
- A&B: If approved, the petitioner would still need to apply for a sign permit and comply with all other requirements in Chapter 807 such as size and illumination;
- A&B: the property is not located in the Environmental Constraints Overlay or floodplain;
- Conclusion A&B: 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 (A1);
- A: the City of Bloomington requires a 2 foot setback from the right-of-way for properties located in their jurisdiction. The petitioner is proposing a sign 5 foot setback from Country Club, which is in the City’s road, and 5 feet from S Rogers ST, which is the County’s road;
- A: The County Highway engineer asked that the sign be located 15 feet from the edge of pavement along Rogers ST. The sign will be approximately 30 feet from the edge of pavement;
- A&B: W Country Club is a Principal Arterial with a proposed 150-foot right-of-way, and S Rogers Street has a right-of-way of 70 feet;
- Conclusion A&B: 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 (A1 & A2);
- B: Digital signs are prohibited in all zones in the County;
- A: All signs are required to be 10 feet from the right-of-way, no matter which zone;
- A&B: The petitioner is asking for variances from the Zoning Ordinance to allow for a digital sign and 5 foot setback, which is not permitted in any County zone and would otherwise require a rezone to a Planned Unit Development;
- B: Digital signage near a residential area is not compatible with the character of the area;
- Conclusion A&B: The character of the property included in the variance **would be altered** in a manner that substantially departs from the characteristics sought to be achieved and maintained within the relevant zoning district;

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

**Findings:**

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

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

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

**Findings:**

- See Findings under (A);
- The site is currently under construction as a gas station;
- A&B: Whether the petitioner receives these variances will not preclude the use of this property as a gas station;
- Conclusion A&B: The specific purposes of the design standard sought to be varied would be satisfied;

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

**Findings:**

- A: The purpose of the sign setback is to not impede site distance. The monument signs will be in line with the setback of the existing building and therefore will not be further encroaching;

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- A: The City and County traffic engineers do not foresee a danger in allowing a sign to be setback only 5 feet from the right-of-way;
- A: there is an existing utility box on the petition site that is approximately 4 feet off of the property line. The monument sign would be shorter than the utility box and would not be visible from the east when viewing west;
- B: Digital signs are believed to distract drivers. The location of the signs would be furthest from the intersection of Rogers and Country Club;
- Conclusion A & B: 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:**

- A: The petitioner could comply with the 10 foot setback, but it would reduce visibility of the sign;
- B: The petitioner does need a digital sign to capture the changing prices of gasoline on a daily basis. The signs would not be able to change more than 8 times per day by ordinance;
- Conclusion A: There **does not** appear to be practical difficulties in the use of the property as the alteration of the proposed sign would negate the need for this variance.
- Conclusion B: There does appear to be practical difficulties in the use of the property as the nature of the business does require digital copy to display changing gasoline prices;

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.

**FINDINGS OF FACT – 1906-VAR-32 – LANDSCAPING REQUIREMENTS:**

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

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

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**because:**

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

**Findings:**

- Approval of the variance would allow the petitioner to omit 3 trees (Southern Red cedar) and 2 grasses (June Grass) from the bufferyard/commercial streetscape;
- The petitioner will meet the required D value for the remainder of the site;
- The site is 0.26 acres;
- The surrounding zones are residential and institutional/public (country club);
- Conclusion: It would not impair the stability of a natural or scenic area;

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

**Findings:**

- The petitioner could move the fence and curb to the east an additional 10 feet as fences and landscaping do not require a side yard setback;
- There are utility boxes on the east side of the property;
- The site will have 20.33 feet between the gas pump and the curb;
- The typical width of a fire truck is 10 feet and about 35 feet long;
- Approval of the variance would allow the petitioner to not plant 3 trees and 2 grasses so that a fire truck could potentially go over the curb to access the area;
- The petitioner previously received a variance to allow the bufferyard to be 6 feet in width instead of the required 20 feet in width;
- Conclusion: It would not interfere with or make more dangerous, difficult, or costly, the use, installation, or maintenance of existing or planned transportation and utility facilities;

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

**Findings:**

- The parcel was rezoned in February 2017 from Commercial Limited (CL) to Limited Business (LB);
- The property received several other variances, including a previous variance to lessen the bufferyard width from 20 feet to 6 feet;
- There will be a 6 foot opaque fence 10 feet off of the property line to buffer the single family residence to the east;
- Surrounding properties are zoned Multi-Dwelling Residential (RM) and Institutional (IN). The neighboring zones in the city include Residential Single Family (RS) to the north and Commercial Limited (CL) to the east;
- The properties to the north and east are in the City of Bloomington's jurisdiction;

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- The surrounding uses in the area are residential to the south and north along S Rogers, institutional to the west, and a large commercial/industrial area to the east on Country Club;
- The property received an Improvement Location Permit for construction in 2017;
- 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:**

- Approval of the variance would allow the petitioner to not plant 3 trees and 2 grasses so that a fire truck could potentially go over the curb to access the area in the event of an emergency;
- The purpose of the landscaped bufferyard is in part to provide screening between differing uses;
- There will be a fence located along the east property line;
- Had the petitioner been part of the City jurisdiction, the bufferyard would be required to have a 10 foot setback and have 1 deciduous tree per 30 feet (approximately 4 trees total required);
- Under the County Zoning Ordinance, the petitioner is required to install a 20 foot wide bufferyard that has 420 D value. Since the petitioner has placed an opaque fence on the property and received a variance so that the bufferyard width could be reduced by ½. The petitioner is required to plant 8 trees for the eastern bufferyard;
- The petitioner is requesting to plant 5 trees instead of the 8 required. The petitioner will be asking to not place 2 grasses as part of the commercial street scape requirement;
- The landscaping must be maintained in perpetuity. If landscaping was damaged by an emergency vehicle, they would need to replace that landscape to be in conformity with the ordinance;
- 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**

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

**Findings:**

- Approval of the variance would allow the petitioner to place mulch only parallel to the canopy so that emergency vehicles could potentially go over the curb;
- The petitioner will be installing all other landscaping according to the approved plans;
- The fence along the east side of the property line will assist with screening the neighbor from light and noise from this property;
- 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:**

- Approval of the variance would allow the petitioner to not plant 3 trees (bufferyard) and 2 grasses (street scape);
- Other variances have been approved for this site due to the size of the parcel in relation to the size of the improvements;
- The petitioner could move the fence and related landscaping east to preclude the need for this variance, therefore there is no practical difficulty.

**QUESTIONS FOR STAFF – 1906-VAR-31 & 1906-VAR-32 – Rogers and Country Club**

Kaczmarczyk: Any questions for staff? Would the petitioner like to speak?

**PETITIONER/PETITIONER'S REPRESENTATIVE –  
1906-VAR-31 & 1906-VAR-32 – Rogers and Country Club**

Kaczmarczyk: Please sign in.

Patel: I am Rajesh Patel from Rogers and Country Club.

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

Patel: Yes, I do. So, the project is like of a little roller coaster at times. It is a small, tight light. We

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had a variance already. We want to tell the customers before they get into the property that they can make the decision to have that knowledge about the gas price. The 10' foot setback, if we put this sign over there then it's not worth it. They are already in the parking lot. They don't need to see that sign after. The second thing was for the emergency vehicles just in case somebody is pumping the fuel and ambulance has to go over there, they need a little more room to get around the station. So, we are requesting the 2 variances.

Kaczmarczyk: Any questions for the petitioner?

Guerrettaz: I am intrigued with the emergency access with the trees. So, is it the type of tree that is causing the issue, that doesn't allow? Could you put the site plan, Jackie? Ok, so is there another one with the dimensions? Do you have another site plan? I thought I saw another one.

Patel: Is that what you are looking for?

Guerrettaz: So, the distance from the curb is 20 foot 4 inches. So, you are saying that if there is a car parked next to that that eliminates that by 6' feet. So, you are saying....

Patel: (inaudible) I don't know the 9 feet calculation if it works if everything is enclosed. Just in case if that car door is open and somebody is moving out from the car or handling their small baby going inside the car then an ambulance or somebody has to wait until they finish their activity.

Guerrettaz: Is the green line a fence, Jackie?

Nester: The green line is their property line. The yellow line is the fence.

Guerrettaz: Ok, so the yellow line is the fence and they showed the fence being there on their site plan.

Nester: Yes.

Guerrettaz: (Inaudible).

Nester: He could move the fence and landscaping 10' feet to the east and the fence doesn't have to meet setbacks. It can be located on the property line, so that would make it 30' feet between the curb and the pump.

Guerrettaz: So the petitioner is saying if he moves the fence over the property line he can move the landscaping over.

Nester: Yes.

Guerrettaz: And it will open up that width.

Nester: Yes. But it would require a site plan amendment to do that.



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Kaczmarczyk: I have a question about the digital, changeable copy on the sign. Are we talking just gas prices is the only digital copy that will be changing?

Patel: Yes. Sign?

Kaczmarczyk: Is there a message that is going to be changing every 10 minutes?

Patel: No.

Kaczmarczyk: Ok, it's just a matter of when you need to change the gas prices you are able to do it from inside.

Patel: That is correct.

Kaczmarczyk: The old fashion way.

Patel: Yes.

Kaczmarczyk: I used to manage a gas station so I understand that. Any other questions for the petitioner?

Clements: I don't have any.

Kaczmarczyk: Bernie?

Guerrettaz: No, I don't.

Kaczmarczyk: Thank you, sir.

Patel: Thank you.

Kaczmarczyk: Would anyone like to speak on behalf of the petitioner? Sign in.

**SUPPORTERS – 1906-VAR-31 & 1906-VAR-32 – Rogers and Country Club**

Curry: My name is Tyler Curry.

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

Curry: I do.

Kaczmarczyk: Thank you.

Curry: I own the adjacent properties to the east and to the south. I am happy to have the development. I am not here to speak in any negative way about the development. I think it will look a lot better than what was there for so many years. My only concern is as a property owner

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and would just be my input is I really think that I would advocate for the landscape buffer. If it needs to be diminished, I am fine but I just think there needs to be a landscape buffer of some sort and as part of that I am fine with the sign setbacks. I have nothing negative to add to that. I would be in support of that. I would also just like to add that if you do vote to approve this then maybe one of the caveats you could throw in there would be to, there was a fence there on the south side of the property that was removed and I would just like to have that put back up along with the landscape buffer that they show on the south property line there in the site plan. But past that I am for what they are doing to the area, the improvements, just like to say I am for some sort of landscape buffer there on the east side and just to put back of my privacy fence. Thank you very much.

Kaczmarczyk: Thank you, sir. Anyone else wish to speak on behalf of the petitioner? Seeing none. Does anyone wish to speak against the petitioner?

(Inaudible)

Kaczmarczyk: Go ahead and sign in, ma'am.

Nester: I will note that just for the last person's comment, there will be a fence along the south and the east side along the property line.

Kaczmarczyk: There will be. Thank you.

Guerrettaz: Are those proposes opaque fence or what is the fence type?

Nester: It had to be opaque, so chain length would not count.

**FURTHER SUPPORTERS –  
1906-VAR-31 & 1906-VAR-32 – Rogers and Country Club: None**

**REMONSTRATORS – 1906-VAR-31 & 1906-VAR-32 – Rogers and Country Club**

Kaczmarczyk: Please state your name.

Gingerich: Marilyn Gingerich.

Kaczmarczyk: Please raise your name. Do you swear to tell the truth and nothing but the truth?

Gingerich: I do.

Kaczmarczyk: Thank you, Marilyn.

Gingerich: I live on Walls Drive, which is just a short distance down Rogers Street. There are maybe 4 houses (inaudible) in the winter when the leaves have lost the trees, I can see the lights and everything on that corner from my backyard and my kitchen window, very clearly on Walls Drive. I am just curious at this point I can't really tell what the impact is of the sign placement

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mostly and I am wondering whether that is going to have more of an impact on the neighbors or less.

Nester: The signs will be monument signs so they are proposed to only be I believe it's like 8' feet from the, well, it's less than that, it's 5' feet from the ground. 45' square feet. I think that the fence is going to be 6' feet so I don't believe based on your elevation from where you are at unless you are a whole lot higher than this gas station, the fence should block your view of the signs. Because there will be a fence along the east side and south side and the sign will be within that fenced in area.

Gingerich: How tall.

Nester: 6' feet.

Clements: The sign is bright.

Nester: The sign is a digital sign. They did submit photometric which is like making sure no light from the canopy is moving off of the property line, so that did meet. But for the digital sign, Larry, are we going to require photometric for the sign? Digital sign. There is an illumination standard for 807.

Clement: 6,000 but I don't know and they are going to be 10 lamps, so that is going to be 46,000 lumens and I can't in my mind relate to how bright that is.

Nester: We have an illumination standard in Chapter 807 that they would have to comply with and I will check with that and just make sure that there is nothing in there that is contradicting the sign that they are proposing. They may need to dim the backlight on the sign and because it's 5' feet it is more likely to move off of the property line faster. But then the signs face would be facing north and south on Rogers and east and west on Country Club.

Clements: So, it would be both directions.

Nester: Yes.

(Inaudible)

Nester: Yes. Other gas stations in the area have the similar sign.

Kaczmarczyk: Does that answer your question ma'am?

Gingerich: I think so. It sounds like it not going to be any more of an impact.

Kaczmarczyk: Thank you, ma'am. Anyone else wish to speak against the petition?

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**ADDITIONAL QUESTIONS FOR STAFF –  
1906-VAR-31 & 1906-VAR-32 – Rogers and Country Club**

Guerrettaz: So, on this exhibit here is that the sign placement and this is the sign placement?

Nester: Yes.

Guerrettaz: The red?

Nester: Yes. I just put it in circles for the PowerPoint.

Guerrettaz: They are putting a sidewalk along the street.

Nester: Sidewalks are already there.

Guerrettaz: I think the information sign, my opinion is (inaudible) you could see what the price of the fuel is without straining or to be able to see it, it's an information sign.

Nester: The property line starts a few feet after the sidewalk ends on that left hand side photo, so the sign will be further to the left of that photo really.

Kaczmarczyk: A little bit to the left.

Nester: Yes.

Clements: The question is whether we allow them to reduce the normal setback which would be 10' feet. Right?

Nester: Right from the property. It is 2' feet in the City of Bloomington but it's 10' feet in the county. I might have another photo.

Kaczmarczyk: Am I right in saying in the past we have approved change, digital copy signs for gas stations for gas prices? Is that true?

Nester: In the past, yes.

Clements: Are there limitations on what they can change to in the future or is that just a standard, ok, today it's just one price but tomorrow it's going to be flashing, rolling script?

Nester: We have 2 standards. One is changeable copy and then other is animated signs and you are talking about animated, which would be an additional variances. They can only change it up to less than 8 times per day, is what they can change it and it would still be under sign permits. We would still review the sign. But the variance runs with the land.

Kaczmarczyk: Would anybody like to make a motion?

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Clements: I would like to discuss it just a bit. It means something to me that the neighbors don't mind and that the neighbors think it's an improvement, you know, to what currently exists. That being said, the brightness of the sign and which will be a change to that corner...

Nester: Correct.

Clements: That kind of disturbs me a little bit because I do think that signs and signage are too much with us, you know, and we have the code to prevent over abundance and over domination of signs. So, as far as the fence and the landscaping is concerned, it sounds like that has been resolved, for the most part. What can the staff do as far as reducing the brightness of the sign as a limitation so it wouldn't be as bright at night or during the day?

Nester: I think the BZA could require a photometric plan, which would say whether or not that digital sign, since it's not necessarily downward facing if it would be omitting any light, foot candle off of the property and line and if you condition that then we could require that as part of the sign permit application process. That would assure everyone that the light produced from that sign isn't casting onto other properties.

Guerrettaz: In excess of what the ordinance...

Nester: Yes.

Clements: That being said, I don't know how to make that motion.

Nester: You could condition approval for the digital sign, based on photometric plan submission.

**FURTHER QUESTIONS FOR STAFF –  
1906-VAR-31 & 1906-VAR-32 – Rogers and Country Club**

Clements: **In the matter of 1906-VAR-31 and 1906-VAR-32, there are 3 motions, 1906-VAR-31 (A,) 1906-VAR-31 (B,) and 1906-VAR-32. I move that we approve the variance requested on 1906-VAR-31 (A) and that we approve 1906-VAR-31 (B) with the condition that we have the photometric scale worked out with staff so that as we discussed and that as far as the variance 1906-VAR-32 that we approve what was discussed here tonight by moving the fence line to the property line and keeping the landscape standards.**

Nester: That would be a denial.

Clements: That would be a denial. So, **I move that we deny it.**

Kaczmarczyk: I **second** that motion.

Wilson: If he does that, he doesn't need a variance.

Nester: That is why I said denial.

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Wilson: I just want to clarify.

Clements: Ok, great. It is moved and seconded.

Wilson: The vote is on petition, I am going to do this as 2 separate votes, just for clarities sake. Motion on petition 1906-VAR-31-Rogers and Country Club Sign Variance. The motion is to approve both variances (A) and (B) with the condition that a photometric scale analysis be done at the time of submitting for a sign permit. Again, a vote in favor is a vote to grant, yes is a vote to grant both variances. Mary Beth Kaczmarczyk?

Kaczmarczyk: Yes.

Wilson: Margaret Clements?

Clements: Yes.

Wilson: Bernie Guerrettaz?

Guerrettaz: Yes.

Wilson: The variances are granted 3 to 0.

**The motion in cases 1906-VAR-31 (A) and (B), Rogers and Country Club Inc Sign Variance to Chapter 807, in favor of approving the variances with the condition set forth in the motion, carried unanimously (3-0).**

Wilson: In regard to petition 1906-VAR-32, Rogers and Country Club Landscape Variance, Variance from landscape standards and Side Yard standards.

Nester: Just bufferyard.

Wilson: Bufferyard standards. Again, a vote, the motion was to deny, a vote in favor is a vote to deny the variance. Margaret Clements?

Clements: Yes.

Wilson: Bernie Guerrettaz?

Guerrettaz: Yes.

Wilson: Mary Beth Kaczmarczyk?

Kaczmarczyk: Yes.

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Wilson: Variance 1906-VAR-32 is denied.

**The motion in case 1906-VAR-32, Rogers and Country Club Inc Landscaping Design Variance to Chapter 830, in favor of *denial* of the variance, carried unanimously (3-0).**

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**NEW BUSINESS**

**7. 1906-VAR-34**

**Feaster Side Yard Setback Variance to Chapter 833**

One (1) 0.69 +/- acre parcel in Van Buren Township, Section 3 at 550 S Kirby Rd. **Zoned RE1**

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

**STAFF ACTION:**

Wilson: This is another variance that Anne was handling that I am going to cover tonight. The number is 1906-VAR-34. The petitioners are Don and Marilyn Feaster. The request is for a design standards variance under Chapter 833 for Side Yard Setback. 833, just to remind you all is the old Fringe zoning that is still in effect for that part of the county that formally was under the jurisdiction of the Bloomington Plan Commission and their ordinance. When the county took over the jurisdiction on 1997 or 1998 we incorporated the City's zoning ordinance at that time into Chapter 833. So, it has some what of different standards than the rest of our ordinance. The property is zone Residential Estate 1 or RE1. It is a part of the Airport Addition Subdivision, which as you can imagine is out by the Airport. The original RE1 side yard setback is 20' feet and the home was constructed in 1976, with a 10' foot Side Yard Setback. The plat has the Side Yard Setback of 12' feet. Typically the setback would be applied but in this case for whatever reason the house was built noncompliance with the subdivision plat and noncompliant with the zoning ordinance of that time. The petitioners desire to add onto the back of their house by enclosing a deck and as you can see there is the deck. To your upper left is the actual side yard intrusion as you can see into the side yard setback. This is a nonconforming structure, so in order to further expand a nonconforming structure, which enclosing the rear yard deck would be, you would have to get a variance from the side yard setback on the house. You cannot expand a nonconforming structure without getting a variance from whatever development standard it does not meet. In this case, it does not meet Side Yard Setback. In order to do any expansion of the house by enclosing the deck they are obligated to get a variance from the Side Yard Setback. Again, this area is in the Airport zone. The Comprehensive Plan shows this area to be Civic Institutional, however there is also a provision for residential uses in that area to continue. The proposed zoning ordinance would continue these residential uses in that area. The recommendation is to approve the design standards variance to Chapter 833 for the Side Yard Setback, based upon the findings of fact we set forth in the report. Again, this is a case where this occurred along time ago before this was in our jurisdiction and the side yard setback violation is not being expanded. This is just allowing them to continue to expand their building. It also allows in the future really takes it out of the noncompliant status in the even they ever get ready to sell the house or seek financing this variance would meant it's in compliance with the zoning ordinance. It is also important for the long term that a Side Yard Variance be granted and staff had no problem with it. It is not inconsistent with the character of the neighborhood and we don't know whether there will be anyone from adjacent neighbors who would object but they certain have the opportunity to come forward and object.

**RECOMMENDED MOTION:**

**Approve** the design standards variance to Chapter 833 for Side Yard Setback based on the findings of fact.



**FINDINGS OF FACT: Side Yard Setback Chapter 833**

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 cover and enclose their rear deck;
- The home was built in 1976 and the last known improvement to the site was completed in 1996;
- There are no designated natural or scenic areas nearby;
- The 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);
- S Kirby is a major collector road that runs along the eastern property line;
- A water line runs along S Kirby and does not interact with proposed construction;
- **The proposed construction would not interfere with the site's septic system;**
- **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 Estate Residential 1 (RE1);
- The minimum side setback for a substandard lot recorded before the ordinance in RE1 is 15';
- The Airport Addition plat, recorded in 1968, lists a minimum side yard setback of 12';
- The home built in 1976 encroached on the platted setbacks by 2';

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- The home is located 10' from the northern property line resulting in the current encroachment of 5' to Chapter 833 table 33-5 (5);
- The proposed addition will not increase the encroachment into the side setback. Future expansion will also need to comply with the 20' side yard setback;
- The use of the property is residential;
- The Comprehensive Plan designates this area as MCUA Institutional;
- The home and lot meets all other design standards;
- **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);
- **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), A(3), and B(1);
- The home does not interfere with any easements or utilities;
- **Conclusion:** There are no foreseeable detrimental conditions to the use and enjoyment of other properties that would result from maintaining the current location of the home.

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

**Findings:**

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

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

**Findings:**

- Practical difficulties has been demonstrated: 1) the home has existed since 1976 and did not meet side yard setbacks recorded in 1968; 2) the home and accessory structures have existed in the current configuration since 1996;
- This variance is the minimum necessary to propose any improvement to the location;

**QUESTIONS FOR STAFF – 1906-VAR-34 - Feaster**

Kaczmarczyk: Is the petitioner here this evening? Would you like to come up and say something, sir? Ok. Anybody here to speak for the petitioner? Anybody here to speak against the petitioner? Seeing none. I will entertain a motion.

**PETITIONER/PETITIONER’S REPRESENTATIVE – 1906-VAR-34 – Feaster: None**

**SUPPORTERS – 1906-VAR-34 – Feaster: None**

**FURTHER SUPPORTERS – 1906-VAR-34 – Feaster: None**

**REMONSTRATORS – 1906-VAR-34 – Feaster: None**

**ADDITIONAL QUESTIONS FOR STAFF - 1906-VAR-34 – Feaster: None**

**FURTHER QUESTIONS FOR STAFF – 1906-VAR-34 – Feaster**

**Clements: In the matter of 1906-VAR-34, I move that we approve the design standards variance to Chapter 833 for Side Yard Setback, based on the findings of fact and staff’s recommendation.**

Kaczmarczyk: I **second** the motion.

Wilson: The motion is on 1906-VAR-34, Feaster Side Yard Setback. A vote in favor is a vote to grant the Side Yard Setback, based upon the findings. Mary Beth Kaczmarczyk?

Kaczmarczyk: Yes.

Wilson: Bernie Guerrettaz?

Guerrettaz: Yes.

Wilson: Margaret Clements?

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Clements: Yes.

Wilson: The variance is granted 3 to 0.

**The motion in case 1906-VAR-34, Feaster Side Yard Setback Variance to Chapter 833, in favor of approving the variance, carried unanimously (3-0).**

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**REPORTS:**

**Planning/Wilson:** No report.

**Legal/Schilling:** No report

**The meeting adjourned at 7:18 P.M.**

Sign:

Attest:

\_\_\_\_\_  
Mary Beth Kacmarczyk, Chairman

\_\_\_\_\_  
Larry J. Wilson, Secretary

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