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**BOARD OF ZONING APPEALS
Regular Meeting Minutes
December 4, 2019 - 5:30 p.m.**

CALL TO ORDER

ROLL CALL

INTRODUCTION OF EVIDENCE

APPROVAL OF AGENDA

APPROVAL OF MINUTES

November 6, 2019

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

ROLL CALL: Mary Beth Kaczmarczyk, David Warren (substitute member for Bernie Guerrettaz), Margaret Clements

ABSENT: Michael McNeil, Mark Kruzan, Bernie Guerrettaz

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

OTHERS PRESENT: David Schilling, Legal

OATH OF OFFICE – Substitute member David Warren

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, as amended, carried unanimously

APPROVAL OF MINUTES:

Motion to continue approval of November 6, 2019 minutes, due to lack of quorum, carried unanimously.

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ADMINISTRATIVE BUSINESS:

- 1. 1. Member Reappointments – Mary Beth Kaczmarczyk 1/1/2020**

OLD BUSINESS:

- 2. 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. 1910-VAR-60 Oliver Winery Pole Sign Area Variance to Chapter 807**
Two (2) 1.19 +/- acre parcels in Bloomington Township, Section 21 at 200 E Winery RD. **Zoned PB.**
- 2. 1911-VAR-61 Cobb Minimum Lot Size Variance to Chapter 804**
One (1) 0.51 +/- acre parcel in Bean Blossom Township, Section 35 at 5901 W Cowden RD. **Zoned ER.**
- 3. 1911-VAR-62 Giles Front Yard Setback Variance to Chapter 804**
One (1) 17.84 +/- acre parcel in Indian Creek Township, Section 10 at 7919 S Harmony RD. **Zoned AG/RR.**
- 4. 1911-VAR-63 Niese Front Yard Setback Variance to Chapter 804**
- 5. 1911-VAR-64 Niese Buildable Area Variance to Chapter 804**
One (1) 10.09 +/- acre parcel in Benton North Township, Section 22 at 8210 N Low Gap RD. **Zoned AG/RR.**
- 6. 1911-VAR-65 Chandler Minimum Lot Size Variance to Chapter 833**
- 7. 1911-VAR-66 Chandler Rear Yard Setback Variance to Chapter 833**
One (1) 1.5 +/- acre parcel in Van Buren Township, Section 19 at 9220 W Elwren RD. **Zoned AG/RR.**
- 8. 1911-VAR-67 Monroe County Highway Garage Surfacing Requirement Variance to Chapter 806**
One (1) 16.25 +/- acre parcel in Van Buren Township, Section 11 at 5850 W Foster Curry DR. **Zoned I.**
- 9. 1911-VAR-68 Arlington Heights Veterinary Hospital Buildable Area Variance to Chapter 804**
One (1) 2.68 +/- acre parcel in Bloomington Township, Section 19 at 4515 W Arlington RD. **Zoned RE1.**
- 10. 1911-VAR-69 Hayse DADU Special Condition #55 Variance to Chapter 802**
One (1) 9.14 +/- acre parcel in Van Buren Township, Section 32 at 6343 S Burch RD. **Zoned AG/RR.**

REPORTS:

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

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ADMINISTRATIVE BUSINESS:

1. Member Reappointments – Mary Beth Kaczmarczyk 1/1/2020

Wilson: Just as an announcement we have Mary Beth Kaczmarczyk is coming up for reappointment this year from the Commissioners. So, let us know or let the Commissioners know if you would like to be reappointed.

Kaczmarczyk: Alrighty, I will do that.

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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: Wilson introduced the petition.

STAFF ACTION:

Nester Jelen: I will just note that this was a Use Variance that was continued. So, it was not granted. It was continued from when it was first heard in January, 2019. It was continued to tonight's meeting, December, to give the petitioner enough time in order to relocate the business after from a residential district to a commercial site. I can run through any other updates but the petitioner is here tonight to get us an update on where he is with that on moving his business location from South Old State Road 37, which is currently zoned Estate Residential. He has a business, Riverway Plumbing, out of the home location site, which is rented out of a garage. The site photos that we have gone through, just to kind of give you an update because it is has been a little while and David is new. The residential accessory structure, the garage, was permitted as a Residential Accessory Structure. It is being partially used for Riverway Plumbing as storage and a small office in there. The home on the site is being rented. We do have Home Based Business standards but if the owner of the business is not residing on the site, it doesn't qualify for a Home Based Business. Instead of rezoning the entire property, which is largely a residential area to be commercial, the petitioner has opted for a Use Variance to give himself some time in order to move the business to an approved zoned location. The staff recommendation on this one is to deny the Use Variance and we are hoping that the petitioner can move this site elsewhere.

RECOMMENDED MOTION

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

FINDINGS OF FACT: Use Variance

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

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

Findings:

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

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(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 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;

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- 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. 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.

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

Patzner: Do I need to be swear in?

Kaczmarczyk: Yes. Sign in and state your name.

Patzner: I am Neil Patzner.

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

Patzner: I do.

Kaczmarczyk: Thank you.

Patzner: As I stated, we closed on the property across the street, which is zoned Pre-Existing Business. Taylor Bruce, has he emailed a print of the shop to Anne?

Nester Jelen: I don't believe we have received anything. We haven't received a filing for a site plan at this point. I know that you have been working with an architect for another location.

Patzner: Today I did get an email and I can pull it up on my phone if you want to see if but he is starting to draw the building out. It has been approved with the building across. We have been here before to get it approved. So, I am hoping to break ground within a month. Hopefully, everything gets, maybe the state plan but at least the site plan will get approved, so we can start moving on the dirt and the state plan. Maybe hopefully we can start building in 3 months. That is where I am at. Our plan is to move out of that spot and turn it back into residential storage and continue renting or to sell it out right.

QUESTIONS FOR STAFF – 1812-VAR-40 – Patzner

Clements: I would like to ask staff what can be done. I mean, he is so close and there have been some hiccups along the way as far as this transition of his business to a new area. What kind of flexibility and what kind of permissions can we temporarily give in order to prevent the wholesale rezone of the property or what have you?

Nester Jelen: I think continuing the case further based on whether how long the petitioner needs could be something the BZA continues to do and then we would just rehear this case in that set amount of time. We can't really sunset a Use Variance. It is either granted or denied. If you deny the Use Variance tonight, we need to move forward with enforcement to move the business out of that property because it is zoned Estate Residential and the use is not permitted. So, by continuing the case, you are basically stating that you don't want us to enforce the zoning on that property until you hear it again.

Clements: Ok and how long do you think, sir that you need in order to really clear yourself of the technicalities that you find yourself in?

Patzner: Basically I would say one to two months of hiccups and then three to four months of construction, so I would say by June of next year I would be completely moved over.

Clements: That would be about 7 months.

Patzner: We can do 6 months.

Clements: Well, I understand that but at the same time I don't want you to have to, you know, I

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am concerned about all of the complications that have occurred and I don't want to set you up for failure. But it just depends on other...

Patzner: But I also want to make sure that we are making progress because all of a sudden 6 months comes down and I am not doing anything, you know what I mean. Do we do another 4 months and see where we are at? I mean I am not trying to put this off but I also know if the public wants movement and knowledge I am willing to step up and make an extra appearance before them.

Clements: That is kind of you and have you received any complaints at the staff level?

Nester Jelen: No. I do believe though that the property just to the north, which is a different enforcement case, was recently sold and purchased by another owner. However, we haven't heard from anyone around there.

Clements: With that being said, do you have any other questions for Mr. Patzner?

Kaczmarczyk: I do not.

Clements: Is there anyone, I am sorry...

Kaczmarczyk: Go ahead.

Clements: Is there anyone from the audience who would like to speak for or against what he is requesting?

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

Clements: That being said, **I would like to propose that we have a 6 month case number 1812-VAR-40.**

Nester Jelen: Just to confirm is that May BZA for six months?

Clements: **Yes, that would be the May BZA meeting.** Just do your best and keep us apprised of any problems along the way. Let's ask for that, ok.

Patzner: I will be sending Anne all of the updates as we go along.

Clements: Great.

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Kaczmarczyk: I **second** her motion. Will you call the roll, Larry?

Nester Jelen: We are just going to confirm the exact date. It would be **May 6, 2020**.

Clements: May 6th, ok.

Patzner: Thank you.

Clements: Thank you.

Nester Jelen: You do need to call the roll.

Kaczmarczyk: Ok, do you want to call the roll, Larry?

Wilson: The next agenda item is ...

Warren: We have to call the roll.

Kaczmarczyk: I thought we had to vote.

Wilson: I am sorry. Since we need a majority vote on this, again it is really hard to hear with this heater right behind me, but I will say this I think that we can do an acclamation vote because it takes 3 votes to approve anything so you have to be unanimous either to approve or deny an items. So, in this case all those in favor?

Kaczmarczyk: Aye.

Warren: Aye.

Clements: Aye.

Wilson: Ok, the continuance to May 6th is approved.

The motion in case 1812-VAR-40, Patzner General Contractor Use Variance to Chapter 802, in favor of continuing this case to the May 6, 2020 BZA Meeting, carried unanimously (3-0).

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NEW BUSINESS

1. 1910-VAR-60 Oliver Winery Pole Sign Area Variance to Chapter 807

Two (2) 1.19 +/- acre parcels in Bloomington Township, Section 21 at 200 E Winery RD. **Zoned PB.**

BOARD ACTION: Kaczmarczyk introduced the petition.

STAFF ACTION:

Creceilius: This petition is located in Washington Township, Section 21, at 200 East Winery Road. The petition site is 40.41 acres. The petitioner is requesting a design standards variance from the Pole Sign Area requirement of Chapter 807. The ordinance requirement for the pole sign area restricts that pole signs to a maximum of 60' square feet per road frontage. So, the petitioner currently had a pre-existing nonconforming sign that is 77.6' square feet. They are requesting this variance in order to relocate the existing pre-existing nonconforming sign approximately 200' feet north to a different location. The current zoning of the petition site, we are specifically looking at 2 small parcels kind of fronting I-69. They are zoning Pre-Existing Business. This site has a little bit of slope but it does not exceed our 15 percent county wide slope restriction. The Comprehensive Plan identifies this area as Rural Residential. Here is a site photo on the top left. This is the existing sign. The bottom photo is a pictometry photo that identifies where they would like to move it to. Right now, North Wayport Road is how you access East Winery Road, so right now when you travel along either I-69 North or North Wayport Road the sign is kind of slightly behind a wood line. It is about 200' feet and they want to move it up toward a little bit of the hill so that it is more visible. Here is a little bit more of a detailed map. These are the 2 parcels that we are looking at. The structure toward the top of the screen has been removed and it is all vineyard right there. The pre-existing sign will be, if this variance is approved, the sign will be moved and a new monument sign will be put in its location. They have plenty of square footage to meet that monument sign. It is mainly the pole sign that exceeds the current 60' square foot requirement. This is a little bit more detailed illustration of their current design. This is the petitioner letter. The petitioner states that moving the sign would result in more appropriate location for visibility with passing motorists and visitors now traveling at a higher rate of speed due to the expansion of I-69. So, staff finds that this really does not change the character of the property but our recommendation is to deny the design standards variance to the Pole Sign Area requirement due to the findings of fact, specifically Fact C. Fact C finds that the petition request doesn't meet Chapter 801 definition of practical difficulties. Practical difficulties have 3 criteria and it is Criteria C that we are looking at, which is that it cannot be reasonably addressed through the redesign or relocation of the development, building, structure existing or proposed. So, this criteria in theory is not met because it could be redesigned to be slightly smaller. Do any of the members have any questions?

RECOMMENDED MOTION:

Deny the design standards variance to the Pole Sign Area requirement due to the findings of fact, specifically findings (C). Findings (C) found that the petition request doesn't meet Chapter 801, definition of "practical difficulties", criteria (C), which is: *"cannot be reasonably addressed through the redesign or relocation of the development/building/structure (existing or proposed)"*.

FINDINGS OF FACT: Pole Sign Area Requirement

812-6 Standards for Design Standards Variance Approval: In order to approve an application for

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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 parcels site is 40.41 +/- acres and is split-zoned Pre-Existing Business and Agricultural/Rural Reserve;
- The site is accessed off of E Winery Rd from N Wayport Rd;
- There is no evidence of karst features, FEMA floodplain or other environmentally sensitive areas;
- Approval of the variance would allow the petitioner to relocate the existing pole sign approximately 200' to the north;
- The proposed sign location will be required to meet the 10' minimum Right of Way setback;
- Conclusion: It would not interfere with a natural or scenic area.

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

Findings:

- See findings under A (1);
- The site gains access via E Winery RD (a designated local road) that currently connects into the access road N Wayport RD;
- All other sign related design criteria are met;
- The site has access to water and sewer;
- 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);
- Winery use is permitted in AG/RR;
- The pre-existing business adjacent to the property is a winery;
- The maximum pole sign allowed within the county is 60' square feet;
- The petitioner combined several of their lots for planning and zoning purposes to

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maximize the buildable area and eliminate setback requirements between lot lines;

- Conclusion: The character of the property included in the variance would not be altered in a manner that substantially departs from the characteristics sought to be achieved and maintained within the relevant zoning district.

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

Findings:

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

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

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

Findings:

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

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

Findings:

- See findings under A (1);
- Conclusion: 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.).

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

Findings:

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

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

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Findings:

- See findings under (A)(1);
- The pole sign can be maintained indefinitely at its current location;
- The pole sign could be relocated with a smaller sign face that complies with the requirements of Chapter 807 requirements;

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 – 1910-VAR-60 – Oliver Winery

Kaczmarczyk: Any questions?

Clements: I don't have any questions myself? Do you?

Warren: No.

Kaczmarczyk: Would the petitioner, obviously would like to say something. Can you state your name and sign in?

PETITIONER/PETITIONER'S REPRESENTATIVE – 1910-VAR-60 – Oliver Winery

Adams: Yes. My name is Julie Adams. I am President out at Oliver Winery.

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

Adams: I do.

Kaczmarczyk: Thank you.

Adams: I just wanted to add a little bit of color. First of all, thank you for hearing our request and the request really comes about because of the roadway changes in front of us. If you remember prior to the I-69 Section 5 construction we had a turn in to our property off of State Road 37. So, that was a 60 mile an hour speed zone and so that larger sign was put and exists at the old turnoff off of the 60 mile per hour zone to really signify for people coming to the winery where to make the turn. With the change with the Section 5 construction now you get off of Exit 125, Sample Road, to come to the winery and you do a couple of roundabouts and come out the access road which is a 35 mile per hour speed zone. We are really trying to at this point we would like to put up a monument sign there, limestone and corten steel, landscape bed, kind of lower to the ground monument sign where that lower speed turnoff is and our hope is that by moving this sign further

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to the north, it will make it for the 70 mile per hour motorists going by in front of the winery, we take a lot of pride in being one of the northern parts of the county welcoming places. We are the first the thing tourist and open to the public operation people kind of come across and whether they see our holiday lights, our limestone and garden sculptures, the winery buildings, we want them to be able to associate, oh there is a winery. There is Oliver Winery there by having that signage within range of what you see on our campus. So, that is what we are seeking to do and why we are seeking to do it. Obviously we could have another sign constructed. This sign if you look at the Oliver Winery and Vineyard lettering is about 42' square feet. It is the "o", the circle ornamentation that has to be measured in with the letter signage that gets us up over the 60' square feet and we are probably not of a mind to reconstruct a brand new sign and scrap this sign but we would like to see if we were able to move it. So, that is a little bit more detail and color behind out request.

Kaczmarczyk: Any questions?

Warren: I just have a quick question. Could you repurpose the existing to bring under the 60' feet?

Adams: The only way that we could do that is with taking off the circle ornamentation.

Kaczmarczyk: That is the only thing that puts it over the 60' feet is the circle ornamentation?

Adams: Yes.

Warren: I just want to make sure that is correct because 15 times 5 is 75' square feet.

Adams: It would be the 15 times 3 because the 3 is the lettering

Warren: Yeah, the lettering.

Crecelius: If I could interrupt. So the way that we measure signs is it includes either logo, the image and then the wording and it is a bonding box that is to the extent of that. So, any of that dead space that holds the rectangle and holds the wording isn't counted.

Warren: Ok, thank you.

Adams: We are trying to stick with the integrity of our logo by leaving the ornamentation there.

Kaczmarczyk: Any further questions?

Clements: I don't have any at this time.

Adams: Thank you very much for hearing us.

Kaczmarczyk: Would anyone else here like to speak on behalf of this petition? Anyone here wish to speak against this petition? Ok, I would entertain a motion.

SUPPORTERS – 1910-VAR-60 – Oliver Winery: None

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FURTHER SUPPORTERS – 1910-VAR-60 – Oliver Winery: None

REMONSTRATORS - 1910-VAR-60 – Oliver Winery: None

ADDITIONAL QUESTIONS FOR STAFF – 1910-VAR-60 – Oliver Winery: None

FURTHER QUESTIONS FOR STAFF – 1910-VAR-60 – Oliver Winery

Clements: This is very difficult because we know the history of the property and with the location of I-69 and Hwy 37, that being said, the staff has recommended that we deny this and that we are trying to keep consistent standards throughout the county for signage. At some point, I believe that there are some practical considerations for Oliver Winery because of the change of the road frontage. But on the other hand I feel that moving the sign creates opportunity to maybe also reduce its profile, so I have mixed emotions about this and mixed thoughts about this at this time. I wondered if any of my colleagues here on the Board of Zoning Appeals has any other thoughts on the matter.

Warren: I also find it difficult but I just don't find it to be an undue burden to redo a sign that falls within the required dimensions.

Kaczmarczyk: Unless it is a financial burden.

Warren: Yes.

Clements: In that case **I would like to make a motion in matter 1910-VAR-60, that we deny the Design Standards Variance as proposed.**

Warren: I will **second** that.

Kaczmarczyk: Call the roll Larry.

Wilson: The vote is on petition 1910-VAR-60, Oliver Winery Pole Sign Area Variance. A yes vote is to disapprove the variance request based upon the findings. Margaret Clements?

Clements: Yes.

Wilson: Mary Beth Kaczmarczyk?

Kaczmarczyk: Yes.

Wilson: David Wallis?

Warren: David Warren but yes.

Wilson: David Warren, sorry. I know a David Wallis and that is what is confusing me.

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Warren: That is ok.

Clements: We are sorry.

Warren: Yeah, it is not a happy yes.

Clements: It is not happy for us because we cherish Oliver Winery and we look for your sign, actually as we come to Bloomington to know that we are home. So, it is not a happy dilemma for us to have to reject this but we do have the design standards that we have to adhere to.

Kaczmarczyk: Thank you.

Clements: Thank you very much.

The motion in case 1910-VAR-60, Oliver Winery Pole Sign Area Variance to Chapter 807, in favor of denying the variance, carried unanimously (3-0).

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NEW BUSINESS

2. 1911-VAR-61 Cobb Minimum Lot Size Variance to Chapter 804

One (1) 0.51 +/- acre parcel in Bean Blossom Township, Section 35 at 5901 W Cowden RD. **Zoned ER.**

BOARD ACTION: Kaczmarczyk introduced the petition.

STAFF ACTION:

Behrman: This one is the Cobb Minimum Lot Size Variance to Chapter 804. This is a 0.51 acre lot, located at 5901 West Cowden Road. That is in Bean Blossom Township, Section 35. The current zoning is Estate Residential and Estate Residential requires a 1 acre minimum lot size. This petition is asking for a minimum lot size variance to convert a residential accessory structure into a residential structure. The Comprehensive Plan is Rural Residential. These are the current site conditions. There is an existing structure that was permitted back in 2013. That was prior to our interpretation of how to deal with minimum lot size. This went up and there have been some small additions to the roof overhang over the doorway, those are included in this new current permit application and then they have submitted a Driveway Permit and a Septic Permit to do this conversion of this residential accessory structure into a 2 bedroom single-family residence. Here is the slope map and I have a small analysis of some of the other lots in the area that are under 1 acre. There are a handful of others. It is not extremely out of the character of the area for some of these lots to be smaller in size. They have existed that way for some time. These are a few of the site photos. The upper one is the residential accessory structure facing south. The bottom picture is the back side of the building and the septic would go kind of toward the back of the lot. This is the front part of the building with that overhang that they are including in this permit application. Then an aerial view of the site. This is the petitioner's site plan. It is not changing a lot but we do see that everything else meets the criteria for setbacks, slopes, buildable area, everything else is met including lot width. It is just this is minimum lot size that we are not meeting. I included the petitioner's letter in the staff packet. With that, staff recommends approval of the design standards variance to Chapter 804 Minimum Lot Size requirement, based on the findings of fact.

RECOMMENDED MOTION:

Approve the Design Standards Variance to the Minimum Lot Size standard in Chapter 804 of the Monroe County Zoning Ordinance based on the findings of fact.

FINDINGS OF FACT: Minimum Lot Size Standard

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

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

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

Findings:

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- Approval of the variance would allow the petitioner to convert a 2,048 sf accessory structure into a residence on the petition site;
- The petition site is zoned Estate Residential (ER) and is 0.51 +/- acres;
- The minimum lot size in Estate Residential (ER) is 1.00 acres;
- The parcel is not platted;
- There is no evidence that the building site is located on sensitive lands;
- There is no known karst on the property;
- There is no evidence that the building would obstruct a natural or scenic view;
- There are other parcels nearby that are under 1.00 acres in size;
- Conclusion: It would not impair the stability of a natural or scenic area;

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

Findings:

- See findings under A(1);
- There is a driveway permit on file 2013233;
- The parcel is located at the intersection of W Cowden RD and W Biscayne RD both designated as Local Roads;
- Conclusion: It would not interfere with or make more dangerous, difficult, or costly, the use, installation, or maintenance of existing or planned transportation and utility facilities;

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

Findings:

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

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

Findings:

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

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

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

Findings:

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

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

Findings:

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

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

Findings:

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

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

Findings:

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

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All variance approvals shall be considered to be conditional approvals. The Board shall have the authority to impose specific conditions as part of its approval in order to protect the public health, and for reasons of safety, comfort and convenience (e.g., to insure compatibility with surroundings). Variance approval applies to the subject property and may be transferred with ownership of the subject property subject to the provisions and conditions prescribed by or made pursuant to the Zoning Ordinance. **NOTE:** The Board must establish favorable findings for ALL THREE criteria in order to legally approve a design standards variance

QUESTIONS FOR STAFF – 1911-VAR-61 - Cobb

Kaczmarczyk: Any questions for staff?

Clements: I have none.

Kaczmarczyk: Would the petitioner like to speak? You don't have to. Would anyone like to speak in favor of this petition? Anybody wish to speak against this petition? Seeing none. Call for a motion.

PETITIONER/PETITIONER'S REPRESENTATIVE – 1911-VAR-61 – Cobb: None

SUPPORTERS – 1911-VAR-61 – Cobb: None

FURTHER SUPPORTERS – 1911-VAR-61 – Cobb: None

REMONSTRATORS - 1911-VAR-61 – Cobb: None

ADDITIONAL QUESTIONS FOR STAFF – 1911-VAR-61 – Cobb: None

FURTHER QUESTIONS FOR STAFF – 1911-VAR-61 - Cobb

Clements: **I would like to move that we approve case number 1911-VAR-61, based on the findings of fact.**

Kaczmarczyk: I **second** that. Call the roll please.

Wilson: The vote is on petition 1911-VAR-61, Cobb Minimum Lot Size Variance. A yes vote is a vote to approve the variance, based upon the findings. David Warren?

Warren: Yes.

Wilson: Mary Beth Kaczmarczyk?

Kaczmarczyk: Yes.

Wilson: Margaret Clements?

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Clements: Yes.

Wilson: The variance is granted 3 to 0.

The motion in case 1911-VAR-61, Cobb Minimum Lot Size Variance to Chapter 804, in favor of approving the variance, carried unanimously (3-0).

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NEW BUSINESS

4. 1911-VAR-63 Niese Front Yard Setback Variance to Chapter 804

5. 1911-VAR-64 Niese Buildable Area Variance to Chapter 804

One (1) 10.09 +/- acre parcel in Benton North Township, Section 22 at 8210 N Low Gap RD. **Zoned AG/RR.**

BOARD ACTION: Kaczmarczyk introduced the petition.

STAFF ACTION:

Behrman: This is 1911-VAR-63, Niese Front Yard Setback Variance to Chapter 804 and 1911-VAR-64, Niese Buildable Area Variance to Chapter 804. This lot is 10.09 acres in size. It is located at 8210 North Low Gap Road and this is in Benton Township Section 22. It is currently zoned Agricultural/Rural Reserve and on this zoning map you will note that there is a creek that runs through the lot. I believe it is Honey Creek. The Comprehensive Plan has this as Farm and Forest and these are the site conditions. Much of this lot is in the FEMA Floodplain and we do have some detailed elevations regarding how high this floods with the 1 percent chance plus the 2 foot free board that Indiana requires. The petitioner is wanting to add to the existing home which is in a very northeast corner of the lot, kind of next to the road which keeps them up and out of the floodplain. We have Elevations Certificates that were provided by a licensed surveyor on file that show that their existing structure and the addition that they would like to do are up and out of the floodplain. But with them being up and out of the floodplain, they are also kind of encroaching into those steep slopes and so they are just working with what they have on this lot in asking for these 2 variances. These are some of the site photos. There is an existing driveway with a small garage attached to the home. The plan is remove that driveway and have a separate driveway entrance. We will see that in the site plan in a little bit. That garage, I believe, is going to be converted into storage. I have another photo on the bottom there facing east. The upper photo is the site of where they are planning on adding this 2-story addition. The bottom half is going to be a garage and then the upper portion will be about 1,095 feet of storage space above. The bottom picture is kind of where their new driveway is going to be coming along and this is also roughly where their septic system is located. We have a very nicely detailed, engineered drawing that you will see in a moment that depicts most of these on the plan. The upper photo is again another view from the south side of the house and where the additional will go is just to the left of the existing home. Then the aerial view down there in the bottom picture. This is a general overview of the site plan that was provided. It is a little hard to see so I did blow it up a little bit and highlighted in yellow a couple of the elevation information, just showing that they are meeting that criteria. They also show on the site plan where the slopes are greater than 15 percent and that their addition will have to encroach into those 15 percent slopes. But there aren't many other options for them to do this addition and because they are adding more than a 1,000 square feet staff was unable to issue a waiver for the buildable area. We do have criteria in Chapter 804 that if it's an addition less than 1,000 square feet then the Director could issue a waiver. This is a larger footprint than that. It is 1,509 square feet, plus the 1,000 square feet above that for storage. One other item to note is the new driveway entrance, I am not sure if you can see it from that far back or in your packet, it is more to the left hand side of the property. The Highway Department has gone out there and given comments on their Driveway Permit application and that is why they are going to be removing the one that is to the north, so that they can add the one to the south and have a different entrance to be able to access that larger garage space. We do not see the septic system on this site plan but I

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did just talk to the petitioner and he will be submitting an addition to this drawing here to show where it is. You can actually see it in this aerial. I was able to detect the exact 5 lines that are described in the 1989 in septic permit, so they are there. What else do I want to mention? This is the plat. One thing that I wanted to mention is when they submitted this Building Permit, it has been awhile, I think it has been 3 years ago. We discovered that some of the structures that were existing on the property to the neighboring property were over the lot line. It was unclear to us so we asked them to do a survey which depicted that some of these structures were incorrectly placed, so they did a lot line shift through a Type "E" Subdivision. During a Type "E" Subdivision you are required to dedicate right of way. They dedicated right of way of 35 feet, which is a minor collector and this was under the old thoroughfare plan. When I was writing this report I discovered that the new thoroughfare plan has reclassified Low Gap road as a local road, which would require really only a 25 foot right of way dedication. But because this plat exists and we do recognize right of way dedication as it is, they are encroaching into the front setback by 2 feet. Had this plat had been platted today right at this point in time we would not a front setback variance. So, I just wanted to explain why the front setback was, it would have been more actually a couple of years ago under that minor collector but because we are using a 35 foot dedicated right of way and then still we are using the local front setback of 25 feet. We still see an encroachment of 2 feet for the existing structure and their addition is not going to encroach any further. The new addition is also going to be just encroaching into that 2 foot of the setback. In the packet I included the elevation certificate saying that we did look closely at this to make sure all of the lowest floor elevation was above the FEMA Floodplain and base flood elevation level that the State of Indiana requires. I included this slide. This is not in your packet but the Highway report did assess this and did not think that any conditions were required on their part but there are some modifications for the new driveway and to remove the old driveway as a part of that permit process. Toby Turner is here in case you do have any questions regarding the Highway Department comments on this petition. The MS4 Coordinator reviewed this as well because of the steep slopes, FEMA Floodplain and he discussed this with the engineer who drew up the site plan just to make sure that the addition was not going to hinder that flow of water coming off of North Low Gap Road. I think they have worked out a way to get that water from pooling in that little alcove between the new addition and the existing home. With that, the recommended motion is to approve the Design Standards Variance to the Front Setback standard in Chapter 804 of the Monroe County Zoning Ordinance, based on the findings of fact and also approve the Design Standards Variance to Buildable Area, Slope Standard in Chapter 804 of the Monroe County Zoning Ordinance, based on the findings of fact with the following 2 conditions;

- 1) Submit a Driveway Permit for the proposed driveway to the Planning Department.

We know that this is in the works already we just need that piece of paper in hand.

- 2) Demonstrate the location of the septic system on the site plan.

We can kind of already see that it's not going to be a conflict, so we feel pretty confident about recommending approval to allow this addition to happen. Any questions?

RECOMMENDED MOTION:

Approve the Design Standards Variance to the Front Yard Setback standard in Chapter 804 of the Monroe County Zoning Ordinance based on the findings of fact.

Approve the Design Standards Variance to the Buildable Area slope standard in Chapter 804 of

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the Monroe County Zoning Ordinance based on the findings of fact and the following two conditions:

1. Submit a driveway permit for the proposed driveway to the Planning Department.
2. Demonstrate the location of the septic system on the site plan.

FINDINGS OF FACT: Front Yard Setback Standard from Chapter 804

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

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

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

Findings:

- The petitioner proposes to add a 1,509 sf garage with 1,095 sf of storage above to an existing 1995 home that is currently 1,340 sf;
- Much of the 10.04 acre petition site is within the FEMA Floodplain;
- There is agriculture use in the form of pasture on the petition site;
- A portion of Honey Creek runs through the southern part of the lot;
- There is no evidence that the home addition 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 Section A(1);
- The petition site is on septic, but the petitioner has not demonstrated the location on the site plan for the three bedroom home;
- The Niese Type E Subdivision was recorded 10/28/2019 that dedicated a 30' right of way under the older Thoroughfare Plan requirements for a minor collector;
- The current Thoroughfare Plan adopted December 18, 2018 reclassified N Low Gap Road to a local road which only requires a 25' right of way dedication;
- Staff enforces platted right-of-way, even if there are changes to the thoroughfare plan;
- The front setback on a local road is 25';
- The petitioner's home and proposed addition would require a 2' encroachment into the front yard;
- The utilities are underground for the petition site;
- Conclusion: It would not interfere with or make more dangerous, difficult, or costly, the use, installation, or maintenance of existing or planned transportation and utility facilities;

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

Findings:

- See Findings under Section A(1) and A(2);
- The site is zoned Agriculture/Rural Reserve (AG/RR);
- Surrounding properties are zoned the same;
- The home to the east has a similar slope / floodplain interface issue and the home is also close to the road;
- 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;
- 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 FEMA Floodplain over most of the parcel;
- An elevation certificate has been submitted confirming the existing home and proposed addition will be above the base flood elevation;

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

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

Findings:

- 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 are practical difficulties in that the petitioner recently dedicated a 30' right of way due to a lot line adjustment and now the road is classified as a local road that requires a 25' right of way; Under local road standards no front setback variance would be required but staff must use the 30' right of way;
- There is FEMA floodplain over most of the lot and the other area out of the floodplain is near the road;
- The existing home is 23' from the right of way and the proposed addition will not encroach any further than the existing structure;
- One additional variance from the Buildable Area slope requirements is required to allow the proposed home addition;

FINDINGS OF FACT: Buildable Area Slope Standard from Chapter 804

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

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

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

Findings:

- The petitioner proposes to add a 1,509 sf garage with 1,095 sf of storage above to an existing 1995 home that is currently 1,340 sf;
- Much of the 10.04 acre petition site is within the FEMA Floodplain;
- The current home is located on slopes greater than fifteen percent as it is the only location that meets the base flood elevation levels for the FEMA floodplain;
- The proposed addition is above the base flood elevation as demonstrated by the site plan and elevation certificate supplied by a licensed surveyor;

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- There is agriculture use in the form of pasture on the petition site;
- A portion of Honey Creek runs through the southern part of the lot;
- There is no evidence that the home addition 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 Section A(1);
- The petition site is on septic, but the petitioner has not demonstrated the location on the site plan for the three bedroom home;
- The Niese Type E Subdivision was recorded 10/28/2019 that dedicated a 30' right of way under the older Thoroughfare Plan requirements for a minor collector;
- The current Thoroughfare Plan adopted December 18, 2018 reclassified N Low Gap Road to a local road which only requires a 25' right of way dedication;
- The utilities are underground for the petition site;
- 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);
- Surrounding properties are zoned the same;
- The home to the east has a similar slope / floodplain interface issue and the home is also close to the road and build into slopes greater than 15 percent;
- Conclusion: The character of the property included in the variance would not be altered in a manner that substantially departs from the characteristics sought to be achieved and maintained within the relevant zoning district;

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

Findings:

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

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

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

Findings:

- See Findings under Section A;
- 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 FEMA Floodplain over most of the parcel;
- An elevation certificate has been submitted confirming the existing home and proposed addition will be above the base flood elevation;
- Conclusion: It would not promote conditions detrimental to the use and enjoyment of other properties;

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

Findings:

- 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 FEMA floodplain over most of the lot and the other area out of the floodplain is near the road;
- One additional variance from the front yard setback requirements is required to allow the proposed home addition;

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

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surroundings). Variance approval applies to the subject property and may be transferred with ownership of the subject property subject to the provisions and conditions prescribed by or made pursuant to the Zoning Ordinance. **NOTE:** The Board must establish favorable findings for ALL THREE criteria in order to legally approve a design standards variance.

QUESTIONS FOR STAFF – 1911-VAR-63 & 1911-VAR-64 - Niese

Kaczmarczyk: Any questions of staff? None. Would the petitioner like to speak? You don't have to. Ok. Would anybody like to speak on behalf of this petition? Seeing none. Would anybody like to speak against this petition? Seeing none. I will call for a motion.

**PETITIONER/PETITIONER'S REPRESENTATIVE –
1911-VAR-63 & 1911-VAR-64 – Niese: None**

SUPPORTERS – 1911-VAR-63 & 1911-VAR-64 – Niese: None

FURTHER SUPPORTERS – 1911-VAR-63 & 1911-VAR-64 – Niese: None

REMONSTRATORS – 1911-VAR-63 & 1911-VAR-64 – Niese: None

ADDITIONAL QUESTIONS FOR STAFF – 1911-VAR-63 & 1911-VAR-64 – Niese: None

FURTHER QUESTIONS FOR STAFF – 1911-VAR-63 & 1911-VAR-64 - Niese

Clements: **I would like to move that we approve case number 1911-VAR-63 and 1911-VAR-64, with the following specifications; that we approve the design standards variance to the Front Yard Setback standard in Chapter 804 of the Monroe County Zoning Ordinance, based on the findings of fact and secondly that we approve the design standards variance to the Buildable Area Slope Standard in Chapter 804 of the Monroe County Zoning Ordinance, based on the findings of fact and the following 2 conditions;**

- 1) The petitioner submit a Driveway Permit for the proposed driveway to the Planning Department.**
- 2) The petitioner demonstrate the location of the septic system on the site plan.**

Kaczmarczyk: I **second** that motion. Call the roll, please,

Wilson: The vote is on petition 1911-VAR-63 and petition 1911-VAR-64, Niese Front Yard Variance and Buildable Area Variances, accordingly. A vote in favor is a vote to grant the variances based upon the findings and with the following 2 conditions; that they obtain a new Driveway Permit and that they verify the location of the septic tank on the site plan. Again, a vote in favor is a vote to grant both variances. Margaret Clements?

Clements: Yes.

Wilson: David Warren?

Warren: Yes.

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Wilson: Mary Beth Kaczmarczyk?

Kaczmarczyk: Yes.

Wilson: Motion carries 3 to 0.

The motion in cases 1911-VAR-63, Niese Front Yard Setback Variance to Chapter 804 and 1911-VAR-64, Niese Buildable Area Variance to Chapter 804, in favor of approval of the variances with the conditions as set forth in the motion, carried unanimously (3-0).

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NEW BUSINESS

3. 1911-VAR-62 Giles Front Yard Setback Variance to Chapter 804

One (1) 17.84 +/- acre parcel in Indian Creek Township, Section 10 at 7919 S Harmony RD. **Zoned AG/RR.**

BOARD ACTION: Kaczmarczyk introduced the petition.

STAFF ACTION:

Payne: This case is a Front Yard Setback Variance from Chapter 804. The site is located at 7919 South Harmony Road in Indian Creek, Section 10. The petition site is zoned Agricultural/Rural Reserve as are the adjoining properties. The current use is single-family residential and surrounding uses are residential or agriculture. Here we are looking at site conditions. The property is accessed off of South Harmony Road, which is classified as a major collector. The primary residence uses a septic system. There are no karst features visible and FEMA Floodplain is not located on the property. This is showing the slope map. While their property does exhibit slopes that are greater than 15 percent in some locations, the proposed covered porch the petitioner is asking for is not located on the slope and therefore meets slope requirements. The petition site is located within the Rural Residential Comprehensive Plan. This is a little bit of a summary. The petitioner is requesting the design standards variance from the Front Yard Setback requirement from Chapter 804 for the purpose of constructing a 16' foot by 25' foot covered porch. The existing single-family structure is located approximately 4' feet inside the 35' foot required Front Yard Setback. The porch, which is to be located in the rear of the home will meet all other required design standards. Some background; the petitioner submitted a residential permit application on October 31st for the addition of a 16' foot by 25' foot covered porch. Upon reviewing the application, it was determined that the existing single-family structure is located in the front yard setback and further development of the home will require a variance. The home was originally built in 1955. In 2016 the petitioner added a 16' foot by 25' foot enclosed home addition. The building permit application listed both the home addition and a pole barn. However, the Planning Department only issued a permit for the pole barn. As such the petitioner was not required at that time to get a Front Yard Setback Variance. This current proposal to add a 16' foot by 25' foot covered porch does in fact trigger the need for a Front Yard Setback Variance. Staff has resolved the issue of the 2016 addition permit and we will ensure that the petitioner does receive Certificate of Occupancy for that home addition. This slide is just showing where that 2016 home addition went on the back of his house and also where the proposed covered porch is planned. This is a picture of the petitioners home looking southwest along South Harmony Road. This photo shows the location of the proposed covered porch which again is off the rear of the home. Also in the files and in the slide show is the petitioner's letter where he is requesting a variance so that he can construct his porch in the back. Based on the findings of fact, staff recommends approving the design standards variance to Chapter 804 for Front Yard Setback.

RECOMMENDED MOTION:

Staff recommends **approval** of the front yard setback requirement to Chapter 804 based on the findings of fact.

FINDINGS OF FACT: Front Yard Setback Chapter 804

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

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

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

Findings:

- Approval of the variance would allow an expansion of the single family residence currently located 31' from the edge of S Harmony Rd which encroaches 4' into the front yard setback;
- The petitioner proposes a 400 sf covered porch. The porch would not encroach in the front yard setback. The porch will meet all required design standards;
- There are no visible karst features on the site or FEMA floodplain;
- There are no designated natural or scenic areas nearby;
- **Conclusion:** Approval of the variance would not impair the stability of a natural or scenic area.

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

Findings:

- See Finding A(1);
- Allowing the covered porch in its proposed location will have no foreseeable impact on utilities;
- The proposed location of the covered porch is 69' from the existing septic, which is the closest utility to the addition;
- **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 above;
- The required front yard setback is determined by the Thoroughfare Plan, not the zoning

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designation;

- S Harmony Rd is designated as a Major Collector with 90' of ROW per the 2018 Thoroughfare Plan;
- The property is zoned Agriculture Rural Reserve (AG/RR);
- The required front yard setback for residential structures is 35';
- The use of the property is residential;
- The surrounding areas are residential and/or agricultural;
- The Comprehensive Plan designates this area as Rural Residential;
- The covered porch structure 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 above;
- The addition of the covered porch will not further increase the encroachment of the single family residence into the front yard setback;
- **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 above;
- The covered porch does not interfere with any easements or utilities;
- The covered porch will be located in the rear of the home;
- **Conclusion:** There are no foreseeable detrimental conditions to the use and enjoyment of other properties that would result from maintaining the current location of agricultural building.

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

Findings:

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

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

Findings:

- The house was built in 1955. Any addition to this house requires a front yard setback variance;
- The design standard variance request is the minimum required for any further development to the petitioner's home;
- The strict application of the ordinance would not allow the petitioner to further develop their existing home.

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 – 1911-VAR-62 - Giles

Kaczmarczyk: Any questions for staff?

Clements: I have none. It is pretty straight forward. Thank you for your presentation.

Kaczmarczyk: Pretty straight forward, thank you. Would the petitioner like to speak? You do not have to. Ok. Well, step on up sir.

PETITIONER/PETITIONER'S REPRESENTATIVE – 1911-VAR-62 – Giles

Giles: I appreciate very much the way the Department and the Planning Department worked with me. I found them to be friendly. I found them helpful and I found them very professional.

Kaczmarczyk: Thank you sir. They are a wonderful group of people and they are very helpful. Anyone else?

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Wilson: Maybe we should have him approach the microphone so we can make sure we get this on the record.

Kaczmarczyk: Shall I swear them in too? Anyone else wish to speak on behalf of this petition? Seeing none. Anyone wish to speak against the petition? Seeing none. I will call for a motion.

SUPPORTERS – 1911-VAR-62 – Giles: None

FURTHER SUPPORTERS – 1911-VAR-62 – Giles: None

REMONSTRATORS –1911-VAR-62 – Giles: None

ADDITIONAL QUESTIONS FOR STAFF – 1911-VAR-62 – Giles: None

FURTHER QUESTIONS FOR STAFF – 1911-VAR-62 – Giles

Clements: **In the matter of 1911-VAR-62, I recommend that we approve the Front Yard Setback requirement to Chapter 804, based on the findings of fact.**

Warren: **Second.**

Kaczmarczyk: I **second** that.

Warren: I third it.

Kaczmarczyk: Would you call the roll, Larry, please?

Wilson: The vote is petition 1911-VAR-62, Giles Front Yard Setback Variance. A vote in favor is a vote to approve the variance based upon the findings. Margaret Clements?

Clements: Yes.

Wilson: David Warren?

Warren: Yes.

Wilson: Mary Beth Kaczmarczyk?

Kaczmarczyk: Yes.

Wilson: The variance is approved 3 to 0.

The motion in case 1911-VAR-62, Giles Front Yard Setback Variance to Chapter 804, in favor of approving the variance, carried unanimously (3-0).

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NEW BUSINESS

6. 1911-VAR-65

Chandler Minimum Lot Size Variance to Chapter 833

7. 1911-VAR-66

Chandler Rear Yard Setback Variance to Chapter 833

One (1) 1.5 +/- acre parcel in Van Buren Township, Section 19 at 9220 W Elwren RD. **Zoned AG/RR.**

BOARD ACTION: Kaczmarczyk introduced the petition.

STAFF ACTION:

Myers: This petition is for 2 variances. One is for Minimum Lot Size to Chapter 804 and the other is for a Rear Yard Setback to Chapter 804. To give you a summary and background here, the petitioner requests 2 design standards variances for the purposes of receiving an after-the-fact Building Permit for a garage addition. The petition site is located in the Agricultural/Rural Reserve zone, which requires a minimum lot size of 2 and a half acres. The site is currently 1.5 acres, so it is one acre under. The rear yard setback for the Agricultural/Rural Reserve zone is 35' feet. You will see here in this presentation that the current placement of the garage is about 13' feet within that setback. The existing family residence received a Manufactured Home Placement Permit in May 2003 and the garage was permitted as a Residential Accessory Structure in March 2001. Documentation for these permits is unavailable, so staff is unable to determine the proposed setbacks of those structures at the time that permit was issued for both of them. In addition the Planning Department did not require minimum lot size variances at the time, based on prior interpretation of the code and now our interpretation brings us to having to present variances to minimum lot sizes. The main purpose of these petitions is to accommodate an as built addition to an existing garage like I stated before. The petitioner stated that the contractor misguided them on the need for a Building Permit when they received the construction. The petitioners have been more than compliant during the variance process and the garage and as built additions are 28' feet by 50' feet and is currently 22' feet from the rear property boundary. That is an encroachment of 13' feet as I stated before. The unpermitted expansion of the existing garage did not increase the encroachment of the rear yard setback and the petition site meets all of the design standards. The petitioner has already applied for the after-the-fact garage addition permit but requires these 2 variances before that permit can be issued. The site is located at 9220 West Elwren Road in Section 19 of Van Buren Township. It is currently zoned Agricultural/Rural Reserve and the surrounding properties are predominantly zoned Agricultural/Rural Reserve. There are some Suburban Residential zones in the area as well. Most of the uses in the area are agricultural or residential. The Comprehensive Plan has this designated as Farm and Forest. Site conditions here, the property has access to West Elwren Road, which is classified as a local road. The lot lines here and the lot lines that you will see on the other maps are not exactly accurate to the actual dimensions of the property. We will see the exact dimensions in the site plan and boundary survey later in this petition. Overall, the petition site contains approximately 2,095' square foot manufactured home, a 1,400' square foot detached garage, a utility shed, carport canopy, and a storage container. The site has frontage like I said on West Elwren Road. The rear property line of the site fronts a railroad track that exhibits a 50' foot right of way from the center line of that track. The site utilizes a septic system and there is no FEMA Floodplain present. No karst features were apparent on the site and the property does not reside in the Environmental Constraints Overlay. There are some steep slopes on the property that are 15 percent or more in grade but those sites are not involved with the garage or this variance. In regards to the minimum lot size, there are approximately 15 parcels that are

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also zoned Agricultural/Rural Reserve that do not meet that 2.5 minimum requirement, so there is some similarity in character of these small lots sizes here in this area. Here we will go through some site photos. The first one on the top left is of the single-family residence. You can see West Elwren Road there as well. The bottom right photograph is of the garage and the garage addition that did not receive a permit at the time of construction. That structure is the structure in question and is in the rear yard setback. Just some more photos here of the site. Here we are looking at behind the detached garage in the rear yard setback and the rear property line and then the bottom right is behind that garage as well just from a different angle. Some more photos of the rear property line where the rear yard setback is. Here we have the petitioner letter requesting the variance. It is also in your packet. Here we have the boundary survey that indicates the location of the detached garage and garage addition and you will notice that it is 22' feet from their property line and the requirement is 35' feet. But like I said in this petition before that garage and garage addition were placed there at a time when we do not know where those setbacks were. We do not have documentation of that. This is the petitioner submitted site plan. It is kind of hard to read but it just shows the location of the garage addition to the detached garage. Another site plan here. You can find all of these materials in your packet. Overall, staff recommends approval of both the Minimum Lot Size and the Rear Yard Setback requirements to Chapter 804, based on the findings of fact. I will now take any questions.

RECOMMENDED MOTION:

Staff recommends **approval** of both the minimum lot size and rear yard setback requirements to Chapter 804 based on the findings of fact.

FINDINGS OF FACT: Minimum Lot Size Chapter 804

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

(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 unpermitted garage addition to remain on the site and receive after-the-fact building permits;
- There are no designated natural or scenic areas nearby;
- The petitioner's site is predominately flat with the majority of the property without steep slopes over 15 percent;
- The As-Built garage addition was located within Buildable 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);
- W Elwren Road is a local road that runs along the southern property line;
- The existing detached garage is located 22' from the northern property boundary, an encroachment of 13' into the rear yard setback;
- The garage and as-built addition is adjacent to a railroad;
- The encroachment into the rear yard setback does not obstruct the 50' railyard right of way;
- The site utilizes a 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 Agriculture Rural Reserve (AG/RR);
- The required minimum lot size is 2.5 acres;
- The lot size measures approximately 1.5 acres;
- The use is residential with surrounding areas being residential and agricultural;
- The Comprehensive Plan designates this area as Farm and Forest;
- This is a pre-existing lot that has not changed dimensions since before the current ordinance;
- The existing single family residence was issued a manufactured home placement permit in May 2003;
- The existing detached garage was issued an improvement location permit in March 2001;
- There are fifteen (15) others lot within a quarter mile radius from the petition site, zoned AG/RR, that do not meet minimum lot size requirements;
- **Conclusion:** Approval of the variance would not 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;

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

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

Findings:

- See Findings A(1) and A(3);
- The purpose of the minimum lot size is to preserve the general character of zoning district;
- There are 15 other lots within a quarter mile radius from the petition site, zoned AG/RR, that do not meet minimum lot size requirements;
- **Conclusion:** Approval of the variance would not significantly impact the purposes of the design.

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

Findings:

- See Findings A(1) and A(3);
- The lot drains to the west with a high point existing approximately 30 feet from the southeast corner of the existing single family residence;
- The garage addition has not interfered with any easements or utilities, and is located 13' within the 35' rear yard setback and is adjacent to railroad track;
- The encroachment does not interfere with the rail right of way;
- **Conclusion:** There are no foreseeable detrimental conditions to the use and enjoyment of other properties that would result from the proposed sunroom and storage building.

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

Findings:

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

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

Findings:

- Practical difficulties have been demonstrated in that the lot exists in the current configuration, which does not meet the minimum lot size for the zoning district (AG/RR);

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- The configuration of the lot is such that the garage addition would not meet the minimum lot size requirement no matter the design or location.
- **Conclusion:** Petitioner has applied for two variances, which is the minimum necessary in order to allow the garage addition to exist and to further develop the lot in any way.

FINDINGS OF FACT: Rear Yard Setback Chapter 804

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

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

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

Findings:

- Approval of the variance would allow the unpermitted garage addition to exist;
- The garage and addition as-built are 28' x 50';
- There are no designated natural or scenic areas nearby;
- The petitioner's site is predominately flat with the majority of the property without steep slopes over 15 percent;
- **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);
- W Elwren Road is a local road that runs along the southern property line;
- The existing detached garage is located 22' from the northern property boundary, an encroachment of 13' into the rear yard setback;
- The garage addition did not increase the rear yard setback;
- The garage and as-built addition did not have an impact on utilities;
- The site utilizes a 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 Agriculture Rural Reserve (AG/RR);
- The rear yard setback in the AG/RR zoning district is 35’;
- The garage and as-built addition is adjacent to a railroad;
- The encroachment into the rear yard setback does not obstruct the 50’ railyard right of way;
- The use is residential with surrounding areas being residential and agricultural;
- The Comprehensive Plan designates this area as Farm and Forest;
- This is a pre-existing lot that has not changed dimensions since before the current zoning ordinance;
- **Conclusion:** Approval of the variance would not alter the character of the property in a manner that substantially departs from the characteristics sought to be achieved and maintained with the relevant zoning district.

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

Findings:

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

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

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

Findings:

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

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

Findings:

- See Findings A(1) and A(3);
- The lot drains predominately to the west with a high point existing approximately 30 feet from the southeast corner of the existing single family residence;
- The garage and as-built addition has not interfered with any easements or utilities;

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

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

Findings:

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

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

Findings:

- Practical difficulties have been demonstrated in that the existing detached garage was issued a permit without regard to rear yard setback of 35' nor the minimum lot size of 2.5 acres;
- **Conclusion:** Petitioner has applied for two variances, which is the minimum necessary in order to allow the garage addition to exist and to further develop the lot in any way.

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 – 1911-VAR-65 & 1911-VAR-66 - Chandler

Clements: I have no questions.

Warren: I just have a quick question not really related to this. But you said the documentation is not available for those permits from 2001 and 2003. Why is that not available? It seems pretty recent.

Myers: I believe that there has been some changes in improvements in the Planning Department's retention of records and saving of those records as well as organizing of those records. We do have records of those permits being issued but those exact applications and the materials that were submitted with those applications were not able to be located.

Warren: Ok.

Kaczmarczyk: Any further questions for staff? Would the petitioner like to speak? You don't have

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to. Ok. Would anyone here like to speak on behalf of the petition? Seeing none. Would anyone like to speak against the petition? Seeing none. I will call for a motion.

**PETITIONER/PETITIONER'S REPRESENTATIVE –
1911-VAR-65 & 1911-VAR-66 – Chandler: None**

SUPPORTERS – 1911-VAR-65 & 1911-VAR-66 – Chandler: None

FURTHER SUPPORTERS – 1911-VAR-65 & 1911-VAR-66 – Chandler: None

REMONSTRATORS – 1911-VAR-65 & 1911-VAR-66 – Chandler: None

**ADDITIONAL QUESTIONS FOR STAFF –
1911-VAR-65 & 1911-VAR-66 – Chandler: None**

FURTHER QUESTIONS FOR STAFF – 1911-VAR-65 & 1911-VAR-66 - Chandler

Clements: **I move that we approve case number 1911-VAR-65 and 1911-VAR-66, for the Minimum Lot Size and Rear Yard Setback requirements to Chapter 804, based on the findings of fact.**

Warren: **Second** that.

Wilson: Ok I will call the roll. The vote is on petition 1911-VAR-65, Chandler Minimum Lot Size Variance and 1911-VAR-66, Chandler Rear Yard Setback variance. A vote in favor is a vote to grant both variances subject to the findings. Margaret Clements?

Clements: Yes.

Wilson: David Warren?

Warren: Yes.

Wilson: Mary Beth Kaczmarczyk?

Kaczmarczyk: Yes.

Wilson: Both variances are granted 3 to 0.

The motion in cases 1911-VAR-65, Chandler Minimum Lot Size Variance to Chapter 833 and 1911-VAR-66, Chandler Rear Yard Setback Variance to Chapter 833, in favor of approving the variances, carried unanimously (3-0).

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NEW BUSINESS

8. 1911-VAR-67 Monroe County Highway Garage Surfacing Requirement Variance to Chapter 806

One (1) 16.25 +/- acre parcel in Van Buren Township, Section 11 at 5850 W Foster Curry DR. **Zoned I.**

BOARD ACTION: Kaczmarczyk introduced the petition.

STAFF ACTION:

Crececius: Thank you. This is for the Monroe County Highway Garage. It is located at 5850 West Foster Curry Drive. It is Van Buren Township Section 11. It is platted within the Fairgrounds Type “E” Administrative Subdivision. Here we can see that it is pretty close to the airport. It is currently zoned Institution. It is split zoned. It is partially Institution, which is a former Fringe zone as well as Estate Residential 1, which is also former Fringe. Just to jump back for a summary. The petitioners are requesting a design standards variance from the Parking Surface requirement of Chapter 806-4D. This requires that off-street parking areas including parking spaces, isles and driveways shall be constructed using plant mixed asphalt, concrete, porous asphalt, porous concrete or permeable paver systems. They are requesting that a soft surface parking of compacted aggregate stone gravel of approximately 20,000’ square feet, a little close to half an acre. The petition site is 1 lot of record totally 16.25 acres. It is split zoned and the site conditions map that is on the screen now there is a water pipe, a sanitary pipe that runs near the property. The parking lot and maneuvering area will not affect either these utilities. There is some steep slopes on the property but it is really limited to right over by the railroad tracks and really does not affect the proposed construction. The Comprehensive Plan has identified this area as being in the Urbanizing Area. It is zoned Institutional or Civic. Here is a crop of the submitted site plan. The areas highlighted in yellow are the proposed new gravel parking areas. The Highway Garage currently has pre-existing nonconforming gravel parking on site. But it really doesn’t connect to this proposed area. Their current gravel can stay and be maintained indefinitely but because it doesn’t connect this area we can’t allow it to be expanded so this is its own variance. Upon variance approval a site plan amendment must be completed before construction would begin. The proposed construction does include a shed, an extended garage area that meets all design standards. It is really only for this parking. Here are some site photos. The red circled areas are where the new garage and parking is going to be. This is for large truck and heavy equipment. It will be parking, loading, unloading and just generally maneuvering area. It is a little difficult to see but this would be the location of the parking and the new building. In the petitioners letter they state that if asphalt pavement is used the heavy machinery and large trucks will damage the pavement and it would need to be continuously repaired and replaced. In addition, stone pavement will reduce the impervious surface area and associated runoff into the raingarden existing pond. We do find that the heavy equipment will damage the pavement and does meet the definition of a practical difficulty as we saw on an earlier variance. Staff recommends approval of the design standards variance of the Parking Surface requirement of Chapter 806, based on the findings of fact.

RECOMMENDED MOTION:

Approve the design standards variance to the Parking Surface requirement based on findings of fact.

FINDINGS OF FACT: Parking Surface Requirement

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

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

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

Findings:

- Approval of the variance would allow the petitioner to add additional soft surface parking (compacted aggregate stone) of approximately 20,150 square feet (approximately 0.46 acres). The gravel would be in place of the standard hard surface paving requirement per Chapter 806 of the Monroe County Zoning Ordinance;
- The variance would waive the design standard requiring paved aisles and parking spaces as required by Chapter 806;
- The proposed development meets required setbacks;
- The site is 16.25 +/- acres and is split-zoned Institutional (I) and Estate Residential 1 (RE1);
- The site has an approved site plan on file. The addition of gravel parking areas will require a site plan amendment to be filed;
- The site has access off of W Foster Curry Road;
- There is no evidence of karst features, FEMA floodplain, or other environmentally sensitive areas;
- Conclusion: It would **not interfere** with a natural or scenic area.

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

Findings:

- See findings under A (1);
- The site has access off of W Foster Curry Road, a local road;
- The site has access to water and utilizes a septic system;
- The proposed development has no foreseeable negative impact on planned transportation facilities or utilities;
- Conclusion: It would **not interfere** with or make more dangerous, difficult, or costly, the use, installation, or maintenance of existing or planned transportation and utility facilities.

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

Findings:

- See findings under A(1) and A(2);
- The majority of the existing equipment parking is unpaved through Chapter 803 as a pre-

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existing non-confirming design.

- The comprehensive plan identifies this area as Institutional or Civic;
- Conclusion: The character of the property included in the variance would **not be altered** in a manner that substantially departs from the characteristics sought to be achieved and maintained within the relevant zoning district.

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

Findings:

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

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

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

Findings:

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

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

Findings:

- See findings under A (1);
- Approval of the variance would allow the petitioner to add additional soft surface parking (compacted aggregate stone) of approximately 20,150 square feet (approximately 0.46 acres). The gravel would be in place of the standard hard surface paving requirement per Chapter 806 of the Monroe County Zoning Ordinance;
- Conclusion: 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.).

(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:

- See findings under (A)(1);
- The petitioner has applied for this variance which would reduce site plan requirements;
- The surfacing requirement is a standard compliance cost similar to other approved projects in the area;
- The additional parking in question is used by employees for county owned heavy-equipment;
- The heavy equipment would damage the asphalt paving and would require continuous upkeep versus allowing gravel;
- Conclusion: There are practical difficulties in the use of the property as defined in Chapter 801;

All variance approvals shall be considered to be conditional approvals. The Board shall have the authority to impose specific conditions as part of its approval in order to protect the public health, and for reasons of safety, comfort and convenience (e.g., to insure compatibility with surroundings). Variance approval applies to the subject property and may be transferred with ownership of the subject property subject to the provisions and conditions prescribed by or made pursuant to the Zoning Ordinance. **NOTE:** The Board must establish favorable findings for ALL THREE criteria in order to legally approve a design standards variance.

QUESTIONS FOR STAFF –1911-VAR-67 – MC HWY Garage

Kaczmarczyk: Any questions?

Clements: I have none.

Kaczmarczyk: Would the petitioner like to speak? Will you please sign in?

PETITIONER/PETITIONER’S REPRESENTATIVE – 1911-VAR-67 – MC HWY Garage

Kaczmarczyk: Please state your name.

Kocarek: I am Don Kocarek with Smith Brehob. We are working for the Highway Garage.

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

Kocarek: I do.

Kaczmarczyk: Thank you, sir.

Kocarek: I just wanted to add a little bit that the 2 gravel areas will be used for large equipment.

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One will be used for large equipment loading and unloading and then maneuvering into that building for maintenance and repair and then the other gravel area will be used for snow plow and dump truck parking. Some existing asphalt out there has been kind of driven over for years and it is in poor condition so we think it would just be a better use to just use gravel instead of asphalt will get torn up.

Kaczmarczyk: Any questions for the petitioner?

Clements: I have none.

Kaczmarczyk: Alright, thank you sir. Anyone here wish to speak on behalf of this petition? Seeing none. Anyone here wish to speak against this petition? Seeing none. Ready for a motion.

SUPPORTERS – 1911-VAR-67 – MC HWY Garage: None

FURTHER SUPPORTERS – 1911-VAR-67 – MC HWY Garage: None

REMONSTRATORS – 1911-VAR-67 – MC HWY Garage: None

ADDITIONAL QUESTIONS FOR STAFF – 1911-VAR-67 – MC HWY Garage: None

FURTHER QUESTIONS FOR STAFF – 1911-VAR-67 – MC HWY Garage

Clements: **In case number 1911-VAR-67, I recommend that we approve that we approve the design standards variance to the Parking Surface requirement based on the findings of fact.**

Kaczmarczyk: I **second** that motion.

Wilson: I will call the roll. The vote is on petition 1911-VAR-67, Monroe County Highway Garage Surfacing requirement. A yes vote is a vote to approve the variance based upon the findings. David Warren?

Warren: Yes.

Wilson: Mary Beth Kaczmarczyk?

Kaczmarczyk: Margaret Clements?

Clements: Yes.

Wilson: The variance is granted 3 to 0.

The motion in case 1911-VAR-67, Monroe County Highway Garage Surfacing Requirement Variance to Chapter 806, in favor of approving the variance, carried unanimously (3-0).

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NEW BUSINESS

9. 1911-VAR-68 Arlington Heights Veterinary Hospital Buildable Area Variance to Chapter 804

One (1) 2.68 +/- acre parcel in Bloomington Township, Section 19 at 4515 W Arlington RD. **Zoned RE1.**

BOARD ACTION: Kaczmarczyk introduced the petition.

STAFF ACTION:

Myers: Thank you. This variance petition is for a design standards variance to Buildable Area requirement to Chapter 804. To give you some summary and background here. The petitioner has requested a design standards variance for the purpose of constructing a new approximately 7,630' square foot Animal Hospital and Veterinarian's Office. The use of the petition site is defined in Chapter 833 as Animal Hospitals and Veterinarians Offices. In May of 2018, Miller and Livingston Properties, LLC, the representative for Arlington Heights Veterinarian Hospital petitioned for a Use Variance from Chapter 833 in order to permit this land use in Estate Residential zoning district. Normally, that use is non-permitted in a residential zone such as that. The Board of Zoning Appeals approved this petition on June 6, 2018. Simultaneously, the petitioner requested a Side Yard Setback design standards variance to Chapter 833 for the purposes of placing a temporary office trailer on the property. All of these variances in 2018 came about due to some fire damage that occurred at the veterinary hospital and in order for them to continue on with their services they requested placement of the temporary trailer office as well as that Use Variance that they needed to put that trailer there and maintain a previously grandfathered use on the property. There were some conditions that were asked of for those variances, especially the one with the Side Yard Setback Variance. All of those conditions had been met aside from the placement of the temporary office trailer. It still exists on the property but we will be asking as a condition of this variance that that trailer be removed once the construction of the new office is completed. The purpose of the Buildable Area Variance here is due to the proposed location of the new animal hospital and veterinary office. Their proposed location is partially within the steep slopes on the property and that is 15 percent in grade, so they had to apply for this variance in order to move forward with site plan and building design and those kinds of things. The new structure will meet all height, bulk, and density standards as well as other code requirements. Including and not limited to commercial parking, landscaping, stormwater requirements, all of those requirements that usually come about during the site plan review stage of planning. If the variance request is approved the petitioner is required to meet the Improvement Location Permit requirements as well as those site plan standards for the construction of the commercial building. The site is located at 4515 West Arlington Road, in Section 19 of Bloomington Township. It may seem like it is 2 lots but it is indeed 1 lot of record and is unplatted. The property is zoned Estate Residential 1 and the adjoining parcels are also zoned Estate Residential 1. There is a site that is also zoned Quarries, Agricultural/Rural Reserve, Medium Density Residential, and Low Density Residential all in the area. The petition site currently contains a commercial building and temporary office structure used as animal hospitals and veterinary offices and the adjacent uses include single-family dwellings, and a welding service to the east. Other businesses along West Arlington Road in the area include a furniture store, a general contractor and a medical office. The Comprehensive Plan has this property zoned as MCUA Phase 1 Suburban Residential and in MCUA Phase 2 it is Gateway West. Here we have a map of the Phase 2 and this was a map of Phase 1. Some site

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conditions, the site is accessed off of West Arlington Road. It is approximately 2.68 acres. It currently exhibits that present veterinarian hospital as well as a temporary office trailer. West Arlington Road is designated as a major collector and the parcel does have those slopes of 15 percent or greater on the property. It appears that those slopes in the area where the proposed location of the new office will be seems to be man made from the first placement of that structure. So, they don't appear to be naturally forming steep slopes. They are likely man made. There is no FEMA Floodplain on the property and there are no apparent karst features either. Here we are going to go through some site photos. This is top left you can see West Arlington Road there and the sign in the background of the Arlington Heights Veterinary Hospital. In reverse facing I believe facing west in Arlington Road continuing and you see the driveway cut there. Some more site photos. The current existing veterinary hospital there in the top left and then on the bottom right you can see the veterinary hospital again and part of the temporary trailer in the right. This is in the rear yard and these are the steep slopes that the new office will be built on. The new office will have a walkout basement type of design, so they will be taking advantage of that slope and not just simply grading it away. Some more photos of the back of the current veterinary hospital. You can see those slopes there and then here we are looking at the back of the property facing the temporary office trailer. Here we have some photos of the remainder of the rear yard. The bottom left is of the eastern property line. The bottom right is the western property line and then the top middle photograph is of the rear property line. Here we have the petitioner's letter. You can find it in your packet. Here we have a preliminary site plan developed for the site. You can see that the new veterinary hospital and office will be larger and in the bottom right corner of that office is where those steep slopes would be, so they will be taking advantage of those slopes and constructing the office there. Where the temporary office trailer currently resides will be a new parking lot. Again, this site plan is preliminary and will go through all the regular review and requirements that Planning staff has. Some more construction plans of the new commercial building. You can find all of those in your packet as well. Overall, staff recommends approval of the design standards variance to Chapter 804 for Buildable Area requirement, based on the findings of fact and subject to the following condition;

- 1) The petitioner remove the temporary office trailer prior to receiving a Certificate of Occupancy for the new commercial building or by June 6, 2021, whichever is soonest.

I will now take any questions.

RECOMMENDED MOTIONS

Approve the design standards variance to Chapter 804 for Buildable Area (15% Slope Requirement) based on the findings of fact and subject to the following conditions:

1. Remove temporary trailer prior to receiving certificate of occupancy for the new commercial building, or by June 6, 2021, whichever is sooner.

FINDINGS OF FACT: Buildable Area (15% Slope)

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

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

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

Findings:

- Approval of the variance would allow the petitioner to build a structure outside of Buildable Area, in an area with 15% slope or greater (as defined in Chapter 825 Area 2 Regulations);
- The site gains access via W Arlington RD, classified as a Major Collector by the Thoroughfare Plan;
- The site is currently exhibits a 5,280 square foot as well as a temporary office trailer that serve as an animal hospital and veterinarian's office;
- The proposed new animal hospital and veterinary office structure is approximately 7,630 square feet and will exhibit a walkout basement type design;
- Construction of the proposed animal hospital and veterinary office is expected to include grading of less than 1 acre;
- By building a walkout basement type design into the manmade slope, there is less soil disturbance required for the construction of the animal hospital and veterinary office;
- The area with manmade slope also does not include heavy tree cover. If the variance is denied, the petitioner would be required to clear a separate area on the lot and could self-create a 15% slope for the purposes of constructing a walkout basement type design;
- The site is adjacent to residential uses, a welding service, and a utility switchyard;
- The site is not in the FEMA Floodplain;
- The petitioner's site is not within the Environmental Constraints Overlay;
- The site does not appear to contain sinkhole conservancy areas;
- Conclusion: It would not impair the stability of a natural or scenic area.

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

Findings:

- See Findings under Section A(1);
- The proposed animal hospital and veterinary office will likely include the installation of a new approved septic system;
- The proposed project would not create additional traffic or impact existing utilities in the area as the use of an animal hospital and veterinary office is currently present at the petition site;
- 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,

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Findings:

- See Findings under Section A(1) and A(2);
- The site is zoned Estate Residential 1 (RE1);
- The site is an existing single lot of record;
- The site exceeds lot size requirements for the zoning district;
- Most of the surrounding properties are zoned RE1, Agriculture/Rural Reserve (AG/RR), and Medium Density Residential (MR);
- The proposed animal hospital and veterinary office would meet density, bulk, setback, and area standards for Estate Residential 1 (RE1) zoning district;
- The proposed animal hospital and veterinary office would meet all other Buildable Area requirements from Chapter 804-4(E), excluding the 15% slope requirement;
- Conclusion: The character of the property included in the variance would not be altered in a manner that substantially departs from the characteristics sought to be achieved and maintained within the relevant zoning district;

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

Findings:

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

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

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

Findings:

- See Findings under Section A(1);
- The proposed animal hospital and veterinary office would meet density, bulk, setback, and area standards for Estate Residential 1 (RE1);
- The variance from slope requirements only applies to the proposed animal hospital and veterinary office structure thus minimizing the amount of land disturbance;
- Conclusion: Approval of the variance would satisfy the design standard sought to be varied.

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

Findings:

- See Findings under Section A(1);

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- Drainage on the property runs south, southeast, and east off the petition site;
- The construction of the proposed animal hospital and veterinary office will be required to meet all Improvement Location Permit requirements, and all other design and site plan standards for the construction of a commercial building;
- Conclusion: It would not promote conditions detrimental to the use and enjoyment of other properties in the area.

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

Findings:

- Property value tends to be subjective as it is difficult to anticipate adverse effects;
- The Board of Zoning Appeals may request the petitioner to address any other significant property use and value concerns raised during the hearing on the requested variance;

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

Findings:

- The proposed location for the animal hospital and veterinary office leverages a pre-existing manmade land grade formation to construct a building with a walkout basement type design;
- If the variance is denied, the petitioner would be required to clear a separate area on the lot and could self-create a 15% slope without a variance for the purposes of constructing a walkout basement type design.

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 –1911-VAR-68 – Arlington Heights

Kaczmarczyk: Just to confirm those slopes are manmade, you said?

Myers: They appear to be manmade, that is correct.

Kaczmarczyk: Manmade. Any other questions for staff? Would the petitioner like to speak? Please sign in. State your name, please.

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PETITIONER/PETITIONER'S REPRESENTATIVE – 1911-VAR-68 – Arlington Heights

Graham: Doug Graham.

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

Graham: Yes.

Kaczmarczyk: Thank you.

Graham: I have nothing to add. I just wanted to make sure that my client was represented. Thank you.

Kaczmarczyk: Ok. Would anyone like to speak on behalf of this petition? Seeing none. Would anyone like to speak against the petition? Seeing none. I call for a motion.

SUPPORTERS – 1911-VAR-68 – Arlington Heights: None

FURTHER SUPPORTERS – 1911-VAR-68 – Arlington Heights: None

REMONSTRATORS – 1911-VAR-68 – Arlington Heights: None

ADDITIONAL QUESTIONS FOR STAFF – 1911-VAR-68 – Arlington Heights: None

FURTHER QUESTIONS FOR STAFF – 1911-VAR-68 – Arlington Heights

Clements: In the matter of case number 1911-VAR-68, I move that we approve the design standards variance to Chapter 804 for Buildable Area, having to do with the 15 percent slope requirement, based on the findings of fact and subject to the following conditions;

- 1) Petitioner remove the temporary trailer prior to receiving Certificate of Occupancy for the new commercial building or by June 6, 2021, whichever is sooner.**

I would like to add that I have been here when the petitioner came before us and I was so saddened by the fire that they experience and I wish them the best of success.

Kaczmarczyk: I **second** the motion. Please call the roll.

Wilson: Who seconded on that?

Kaczmarczyk: I did.

Wilson: Ok. The vote is petition 1911-VAR-68, Arlington Heights Veterinary Clinic Buildable Area Variance. A yes vote is a vote to approve, based upon the findings with the development review conditions in the staff report, with the condition that the temporary trailer be removed prior to receiving the Certificate of Occupancy or June 6, 2021, whichever is sooner. Again, a yes vote is a vote to approve. David Warren?

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Warren: Yes.

Wilson: Mary Beth Kaczmarczyk?

Kaczmarczyk: Yes.

Wilson: Margaret Clements?

Clements: Yes.

Wilson: The variance is approved 3 to 0.

The motion in case 1911-VAR-68, Arlington Heights Veterinary Hospital Buildable Area Variance to Chapter 804, in favor of approving the variance with the conditions set forth in the staff report, carried unanimously (3-0).

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NEW BUSINESS

10. 1911-VAR-69 Hayse DADU Special Condition #55 Variance to Chapter 802
One (1) 9.14 +/- acre parcel in Van Buren Township, Section 32 at 6343 S Burch RD. **Zoned AG/RR.**

BOARD ACTION: Kaczmarczyk introduced the petition.

STAFF ACTION:

Creceilius: This petition is located at 6343 South Burch Road. It is a design standard variance to the DADU, Detached Accessory Dwelling Unit Condition # 55-4 of Chapter 802. The petition site is located in Van Buren Township in Section 32. It is unplatted. It is 9.14 acres. It is currently zoned Agricultural/Rural Reserve. The site conditions are mainly flat. It is as it looks, fields and meadows and it may have been used for agricultural in the past. It contains one structure, a single-family residence of a mobile home. It does have 2 driveways and 2 residential accessory buildings. There is some slope on the property but it is mainly buildable area and the Comprehensive Plan identifies this site as Rural Residential. This request is a design standard variance from that DADU requirement. The mobile home that is on the property was, the property report on Elevate identifies it as being placed in, let me make sure I say this correctly, placed in 1968. Mobile homes have a restriction under the DADU requirements. In order to have a Detached Accessory Dwelling Unit, there are multiple requirements. It is Condition number 55, but it is DADU requirement number 4, which is that a manufactured home may not be used as an Accessory Dwelling Unit if it was constructed prior to January 1, 198. This is for the HUD requirements which are important within the county. They have many safety requirements. The petitioner would like to request this variance because they are in the process of purchasing the property and they would like to permit the existing mobile home as a DADU and then eventually apply for a new single-family residence on the site. So they would like to build towards the east of the property, towards the back of the aerial pictometry photo that we see on the screen. In order to do that we spoke with the Monroe County Building Department and really the petitioner just needs to show that the home can meet current building codes as well as they would need this variance to be approved. Because we do have that age very specifically stated throughout our ordinance because of that pretty important milestone for manufacturing homes for safety. The petitioner had a private home inspector come out and look at the property and when speaking with the Building Department it was pretty identifiable concerns, such as electrical and a few other issues like making sure underneath the trailer was correct in that it could be leveled. Nothing large. Nothing is extremely out of the ordinary. The petitioner is stating in their letter to the BZA that they are more than happy to update whatever needs to be done to the mobile home to make sure that it can meet current building standards. To jump back, this is the manufactured home. You can see that it has had a roof built over the top of it sometime probably multiple decades ago. It appears to be in good condition. When the private home inspector was there it had snowed, so that was one of the items that they did want to have checked out on a different day. You can see 2 of the accessory buildings and a carport that was included with the roof. It does have 2 driveways. In order to permit the DADU one of the other requirements is that it has a shared driveway with the primary residence. So when they do apply for a Building Permit for that single-family residence and if this is approved and this becomes a DADU one of those driveways will need to be eliminated or shared with the primary residence. The petitioner is aware of all of the other requirements for the DADU. Staff recommends approval

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of the design standards variance to the DADU Condition 55-4, due to the findings fact and also with the following condition;

- 1) To submit a second private home inspection upon completion of the improvements prior to receiving the necessary Improvement Location Permits in order to convert the structure into a DADU.

RECOMMENDED MOTION:

Approve the design standards variance to the DADU Condition 55-4 requirement due to the findings of fact and the following conditions:

1. Submit a second private home inspection report upon completion of improvements prior to receiving necessary Improvement Location Permits to convert the structure into a DADU.

FINDINGS OF FACT: DADU Condition 55-4

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 site is 9.14 +/- acres and is -zoned Agricultural/Rural Reserve;
- The site contains a SFR manufactured home built in approximately 1968;
- The site has road frontage and two driveways off of S Burch Road;
- There is no evidence of karst features, FEMA floodplain, or other environmentally sensitive areas;
- Approval of the variance would allow the petitioner to permit the existing manufactured home as a DADU upon applying for a SFR building permit;
- Conclusion: It would not interfere with a natural or scenic area.

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

Findings:

- See findings under A (1);
- The parcel is addressed off of S Burch Road, a Local Road (50') according to the Thoroughfare Plan;
- The petition site meets all other design criteria;
- The site has access to water and utilizes a septic system;
- The petitioner will be required to submit a real estate septic permit prior to allowing the conversion of the manufactured home to a DADU;
- Conclusion: It would not interfere with or make more dangerous, difficult, or costly, the use, installation, or maintenance of existing or planned transportation and utility facilities

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

Findings:

- See findings under A(1) and A(2);
- The comprehensive plan identifies the site location as rural residential which states that density in this area “shall preserve the rural lifestyle opportunity of this area and help protect nearby Vulnerable Lands”;
- The permitting of the manufactured home as a DADU and building a SFR would not significantly alter the character or the site;
- Allowing a DADU is a permitted use in the AG/RR zones when the conditions can be met;
- Conclusion: The character of the property included in the variance would not be altered in a manner that substantially departs from the characteristics sought to be achieved and maintained within the relevant zoning district.

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

Findings:

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

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

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

Findings:

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

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

Findings:

- See findings under A (1);
- Approval of the variance would allow the petitioner to apply for a permit to convert the existing manufactured home into a Detached Accessory Dwelling Unit upon applying for a new SFR building permit;
- Conclusion: It would not promote conditions (on-site or off-site) detrimental to the use

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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.).

(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);
- Approval of this variance is the minimum necessary to convert an existing manufactured home into an Accessory Dwelling;
- The petitioner could continue utilizing the manufactured home as a residence as it is only the conditions of a DADU that is triggering that the structure must be newer than 1981.

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 –1911-VAR-69 - Hayes

Kaczmarczyk: Any questions for staff?

Warren: No.

Clements: I am just very pleased with the presentation and also the effort that you go to help protect the homeowners. I appreciate it.

Crececius: Thank you.

Kaczmarczyk: Would the petitioner like to speak? You don't have to. Ok. Anybody here wish to speak on behalf of the petitioner? Seeing no one. Anyone here wish to speak against the petition? Seeing no one again. I call for a motion.

PETITIONER/PETITIONER'S REPRESENTATIVE – 1911-VAR-69 – Hayes: None

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SUPPORTERS – 1911-VAR-69 – Hayes: None

FURTHER SUPPORTERS – 1911-VAR-69 – Hayes: None

REMONSTRATORS – 1911-VAR-69 – Hayes: None

ADDITIONAL QUESTIONS FOR STAFF – 1911-VAR-69 – Hayes: None

FURTHER QUESTIONS FOR STAFF – 1911-VAR-69 - Hayes

Clements: **In case number 1911-VAR-69, I would like move that we approve the design standards variance to the DADU Condition 55-4 requirement, due to the findings of fact and with the following condition;**

- 1) The petitioner submit a second private home inspection report upon completion of improvements prior to receiving necessary Improvement Location Permits to convert the structure into a DADU.**

We want you to be safe.

Warren: I **second** that, the motion and I want you to be safe.

Kaczmarczyk: Please call the roll, Larry.

Wilson: The vote is on petition 1911-VAR-69, Hayes Detached Accessory Dwelling Unit variance from Special Condition 55-4, in regard to the age of the mobile home. A vote to approve is a vote to approve the variance based upon the findings and with the condition that a second private home inspection report be submitted upon completion of the improvements prior to receiving the necessary Improvement Location Permits to convert the structure into a Detached Accessory Dwelling Unit. Again, a vote of yes is a vote to approve the variance based on the findings and with the conditions. Margaret Clements?

Clements: Yes.

Wilson: David Warren?

Warren: Yes.

Wilson: Mary Beth Kaczmarczyk?

Kaczmarczyk: Yes.

Wilson: The variance is granted 3 to 0.

The motion in case 1911-VAR-69, Hayse DADU Special Condition #55 Variance to Chapter 802, in favor of approving the variance with the conditions set forth in the staff report, carried unanimously (3-0).

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REPORTS:

Planning/Wilson: I have announcement for you and that is to invite you to the courthouse Christmas party which is going to be roughly noon on December 12th, a week from tomorrow and you just need to confirm your attendance online if you want to have a free lunch at the courthouse.

Kaczmarczyk: I received an email on that today.

Clements: Yes, very nice.

Wilson: If we have a formal flyer on that I will forward that to you. I think the due date is on Friday to respond.

Kaczmarczyk: Thank you.

Clements: Thank you.

Wilson: The other thing is I would like to thank you for this years' service. It has not been a particularly easy year. I would like to thank David for stepping in on short notice to be a substitute BZA member and allow us to have a quorum tonight and deal with all of these cases.

Warren: I am happy to. No problem.

Wilson: I can't imagine what the January meeting would have been like otherwise. So, we really appreciate it. Again, thank you for your service this year and look forward to working with you in the future. I would like to thank CATS as well for broadcasting our meetings throughout the year. Thank you. That is all that I have.

Kaczmarczyk: Thank you CATS.

Warren: Thank you CATS.

Clements: And thank you Larry for all that you do and you too David, and Drew and Anne, and Tammy. We have just had a lot of really good stewardship of the county's dilemmas and I really appreciate your patience with me throughout the year.

Kaczmarczyk: And your patience with me as I learn how to do this.

Wilson: That is all that I have. David, do you have anything?

Schilling: I do not.

Legal/Schilling: No report

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Clements: I move that adjourn.

Warren: Second that.

Kaczmarczyk: Meeting is adjourned.

The meeting adjourned at 6:57 P.M.

Sign:

Attest:

Mary Beth Kaczmarczyk, Chairman

Larry J. Wilson, Secretary

DRAFT