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**BOARD OF ZONING APPEALS
Regular Meeting Minutes
January 8, 2020 - 5:30 p.m.**

CALL TO ORDER

ROLL CALL

INTRODUCTION OF EVIDENCE

APPROVAL OF AGENDA

APPROVAL OF MINUTES

December 4, 2019

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

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

ABSENT: None

STAFF PRESENT: Larry Wilson, Director, Anne Crecelius, Planner/GIS Specialist, Drew Myers, Planner/GIS Specialist

OTHERS PRESENT: David Schilling, Legal, Terry Quillman, MS4 Coordinator

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 December 4, 2019 minutes, due to lack of quorum, carried unanimously.

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ADMINISTRATIVE BUSINESS: Assign Chair and Vice Chair

OLD BUSINESS: NONE

NEW BUSINESS:

- 1. 1911-VAR-71 Jerad Oren Sinkhole Conservancy Easement Variance**
One (1) 3.33 +/- acre parcel in Perry Township, Section 21 at 4492 S Walnut Street Pike. **Zoned RS3.5/PRO6**

- 2. 1912-VAR-72 Cummins Version II Buildable Area Variance to Chapter 804**
One (1) 0.3 +/- acre parcel in Benton North Township, Section 34 at 7673 N Tunnel RD. **Zoned SR.**

- 3. 1912-VAR-73 Mullis Buildable Area Variance to Chapter 804**
- 4. 1912-VAR-74 Mullis ECO Area 3 Variance to Chapter 825**
One (1) 1.78 +/- acre parcel in Benton South Township, Section 17 at 6340 N Viking Ridge RD. **Zoned SR & ECO3.**

REPORTS:

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

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ADMINISTRATIVE BUSINESS:

1. Assign Chair and Vice Chair

BOARD ACTION: Kaczmarczyk introduced the petition.

STAFF ACTION:

Wilson: We need to elect a Chairman and a Vice Chairman.

Clements: I would like to **nominate Mary Beth Kaczmarczyk as the Chair.**

Guerrettaz: **Second.**

Clements: All those in favor.

Kaczmarczyk: Aye.

Clements: Aye.

Guerrettaz: Aye.

Wilson: Great that was easy.

The motion to elect Mary Beth Kaczmarczyk as Chair of the Board of Zoning Appeals, carried unanimously (3-0).

Wilson: We still need a Vice Chair.

Guerrettaz: **I move that we appoint Margaret Clements as Vice Chair of the Board of Zoning Appeals.**

Clements: Thank you Bernie.

Kaczmarczyk: I **second** that. All in favor.

Clements: Aye.

Guerrettaz: Aye.

Kaczmarczyk: Aye.

The motion to elect Margaret Clements as Vice Chair of the Board of Zoning Appeals, carried unanimously (3-0).

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NEW BUSINESS

1. 1911-VAR-71

Jerad Oren Sinkhole Conservancy Easement Variance

One (1) 3.33 +/- acre parcel in Perry Township, Section 21 at 4492 S Walnut Street Pike. **Zoned RS3.5/PRO6**

BOARD ACTION: Wilson introduced the petition.

STAFF ACTION:

Creceilius: Thank you. This petition is for petitioner Jerad Oren, who is present here today. This is a design standard variance request from the Sinkhole Conservancy Area requirement Chapter 829-3, specifically 3(C) (2). The petition parcel is located in Perry Township, Section 21. It is located at 4492 and 4580 South Walnut Street Pike. The petition site is zoned Suburban Residential, which is a former Fringe zone, SR. Is that correct? I misspelled that. It is, that is correct, RS3.5, there we go, which is Suburban Residential. It also has an overlay, which is the Planned Residential Overlay 6, of the Chapter 833, former City of Bloomington jurisdiction. The petitioner is requesting this variance in order to maintain an existing driveway that crosses 2 platted Sinkhole Conservancy Areas. The 2 parcels were platted. This is Lot 3 and 4 of a 4 lot subdivision, Cardinal Creek Minor Subdivision. It was platted in 2007. There were 5 Sinkhole Conservancy Areas that were dedicated during this subdivision process. The petitioner installed a driveway that crosses through 2 of the sinkholes. This is the current condition. That is driveway that was installed earlier this year. This is the Cardinal Creek plat to get a bigger scale. Since platting 4 karst features were missed. The petitioner recently had a geotechnical report done of the site to get some information about keeping that existing driveway there and they discovered 4 additional karst features across the property. This is a site plan of the proposed build across Lots 3 and 4. They are hoping to build a residential home with an accessory structure. The geotechnical report that was done recently by Alt & Witzig Engineering. Their summary is included under site conditions in your packet states that they performed a subsurface investigation and evaluation to determine the suitability of the site for potential residential construction at the site. Based on the limited subsurface investigation, the proposed residential development at this site appears to be feasible from a geotechnical perspective. In their discussion they state that the use of conventional foundations will be feasible for this site and that lightly loaded residential structures will be likely bear on the red clays at the site. So, a little bit of background the Sinkhole Conservancy Area requirement that we are looking at 829-3 (C) (2), states that all SCA's shall be established the following minimum standards; for sinkholes greater than one quarter acre in size, the SCA shall at minimum encompass an area within 50 feet of the post-development sinkhole flooding area and as determined in 829-6 or all of the area within 25 feet of the sinkhole rim, whichever is less. Which restricts development from within and near those boundaries of the sinkhole. There is very little slope on this site. There is a gentle slope that's over 15 percent away from the buildable where they are proposing to build. It has plenty of buildable area. The Comprehensive Plan identifies this site as Mixed Residential for MCUA Phase 1 and MCUA Phase 2 identifies it as Gateway South. The MCUA Phase 2 Gateway South is consistent with the use for these lots in the subdivision. It is intended to preserve historic assets while accommodating sensitive infill and redevelopment in the southern gateway to Bloomington. The district is intended to implement the vision for neighborhood scale infill development in Clear Creek Gateway area of the Urbanizing Area Plan. On the screen are some site photos. The petitioner added the driveway in error and has been compliant throughout the enforcement process. The MS4 Coordinator for Stormwater has reviewed, let me back up, they

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had requested that, where is my wording. The Stormwater Engineer requested that some of the features right at the front of the lot near the entrance on South Walnut Street Pike were stabilized immediately. We issued a separate Grading Permit so that they could stabilize the site and install culverts. Now because it does continue on through the sinkholes it would require this variance. It is the minimum required to keep the driveway where it is. Here on the screen you can see the area stabilized looking west toward the back of the property. So, this is now looking east. We are just west of the sinkholes. This is the driveway. This is the two Sinkhole Conservancy Areas. I have tried to outline where they are. They are a little difficult to see on the photo. Without this variance the petitioner would not be able to develop the property that is platted in the subdivision even after combining two lots due to the number and location of sinkholes on the property. Staff does find that this meets the standards of practical difficulties as defined in Chapter 801. The area where the drive would have to be located to avoid all other Sinkhole Conservancy Areas would disturb a natural drainage swale that the MS4 Operator has requested remain as is. The petitioner is planning on combining two of the lots to make the subdivision a 2 lot subdivision as opposed to the current 4 lot subdivision, reducing future density. Staff recommends approval based on the findings of fact and conditional to Highway and Drainage reports. Does anyone have any questions?

RECOMMENDED MOTION:

Approve the design standards variance based on findings of fact and subject to Highway and Drainage reports.

FINDINGS OF FACT: Sinkhole Conservancy Area

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 keep and maintain the existing driveway that is located through two (2) Sinkhole Conservancy Areas;
- The petitioner added the driveway in error and has been compliant throughout the enforcement process;
- he site is 3.33 +/- acres and is zoned Estate Residential 2.5 (RE2.5) and PRO6 of Chapter 833;
- The site has permitted driveway access off of S Walnut Street Pike;
- The petition site contains five (5) total sinkholes that were are within dedicated Sinkhole Conservancy Areas;
- The driveway location currently does not interfere with sinkhole eye or the drainage of the area;
- Moving the driveway would require additional land disturbance in proximity to other sinkhole conservancy areas;

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- The site is not within the FEMA Floodplain or contains other environmentally sensitive features;
- 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 S Walnut Street Pike, a Minor Collection [60'];
- 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);
- MCUA Phase I identifies this area as Mixed Residential and MCUA Phase II identifies it as Gateway South;
- 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

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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 maintain the existing driveway, installed in prior to issuance of a grading permit but with a driveway permit, that crosses two (2) Sinkhole Conservancy Areas;
- A geotechnical report was submitted by the petition which states that the site is eligible for residential structural loads (see Exhibit 3);
- The grading permit application has been review by the Monroe County MS4 Operator;
- 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.

Findings:

- See findings under (A)(1);
- This request is the minimum variance request to maintain the driveway in it's current location;
- The site contains three (3) other sinkholes within SCA;
- When the property was platted as a residential subdivision, 4 karst features were not fully identified. The petitioner has since conducted further karst research and has found that there are 9 sinkholes on the property rather than the original 5 shown. The area where the drive would have to be located to avoid all other sinkhole conservancy areas would disturb a natural drainage swale that the MS4 Operator has requested remain as is;
- The petitioner will be combining 2 lots to make the subdivision a 2 lot subdivision as opposed to the current 4 lot subdivision;
- Without this variance, the petitioner would not be able to develop the property that is in a platted subdivision, even after combining 2 lots, due to the number and location of

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- sinkholes on the property;
- 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-71 – Oren

Clements: No, not for staff.

PETITIONER/PETITIONER’S REPRESENTATIVE – 1911-VAR-71 – Oren

Kaczmarczyk: Would the petitioner like to step forward and speak? Ok, you don’t have to, sir. Would anyone here like to speak on behalf of the petition? Seeing. Would anybody here like to speak against the petition? Seeing none. I will entertain a motion.

SUPPORTERS – 1911-VAR-71 – Oren: None

FURTHER SUPPORTERS – 1911-VAR-71 – Oren: None

REMONSTRATORS - 1911-VAR-71 – Oren: None

ADDITIONAL QUESTIONS FOR STAFF – 1911-VAR-71 – Oren: None

FURTHER QUESTIONS FOR STAFF – 1911-VAR-71 – Oren

Guerrettaz: **In the matter of case number 1911-VAR-71, design standards variance Sinkhole Conservancy Area requirement of Chapter 829-3, 4492 and 4580 South Walnut Street Pike, I move that we approve the variance, based on practical difficulties.**

Clements: I **second** the motion.

Kaczmarczyk: Larry, please call the vote.

Guerrettaz: Excuse me. **Subject to staff report and Drainage and Highway Department’s recommendation.**

Wilson: The vote is on petition 1911-VAR-71, Oren Sinkhole Conservancy Variance. A variance from the SCA. A vote in favor is a vote to approve the variance based upon the findings with the conditions set forth in the staff report as well as the conditions from Highway and Stormwater

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included in the staff report. Margaret Clements?

Clements: Yes.

Wilson: Bernie Guerrettaz?

Guerrettaz: Yes.

Wilson: Mary Beth Kaczmarczyk?

Kaczmarczyk: Yes.

Wilson: The variance is granted 3 to 0.

The motion in case 1911-VAR-71, Jerad Oren Sinkhole Conservancy Easement Variance, in favor of approving the variance, carried unanimously (3-0).

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NEW BUSINESS

2. 1912-VAR-72

Cummins Version II Buildable Area Variance to Chapter 804

One (1) 0.3 +/- acre parcel in Benton North Township, Section 34 at 7673 N Tunnel RD. **Zoned SR.**

BOARD ACTION: Kaczmarczyk introduced the petition.

STAFF ACTION:

Myers: This is a letter of remonstrance from a neighbor that was given to us after the packet came out, so I am distributing those to you now. This petition is the Cummins Version II Buildable Area Variance to Chapter 804. To give you a little bit of summary and background here, the petitioner requested the design standards variance from Chapter 804-4 (E) of the Monroe County Zoning Ordinance. The variance request is for the construction of an attached 2-car garage outside of buildable area, or more specifically on slopes greater than 15 percent. The proposed attached garage will be placed on the western side of the house measuring 20' by 28' and will be utilized for residential use. The current single family residence was constructed in 2017 and was granted a design standards variance from the Buildable Area requirement by the Board of Zoning Appeals and that was in May of 2016. The purpose of that variance was to demolish the old 272' square foot residence and construct a new 826' square foot residence. That variance was granted with conditions; that the land disturbance in 15 percent slope area was permitted only for the single family dwelling as shown in the submitted plans and that erosion controls were followed. We saw this petition, a very similar petition, in October. They came in for a variance for a 260' square foot 1-car garage. After they had received that variance petition that was approved by this board in October the site plan and construction plans were submitted for a Building Permit and an Improvement Location Permit to the Planning Department. Upon review of that application, we realized that the size of the garage had increased by 300' square feet. We notified the builder and the petitioner about this deviance from the approved variance and they stated that they wanted to increase the size of the garage now that they had changed their mind and in order to do so they would have to file for another variance. That is why we are here today. All of the conditions of that October 2019 variance were approved, they were accepted. Some of those conditions were an as-built survey of the property that included the storage shed that had not been included on the original plans for the 826' square foot home. The other conditions were that they acquire and after-fact Improvement Location Permit for the storage shed, they did that. They also completed a drainage plan that is satisfactory to the county MS4 Coordinator. That was also completed as well and then they also completed work with Planning staff in ensure placement of the attached 1-car garage would not encroach in any easements on the property.

Guerrettaz: Could you repeat that last condition?

Myers: Sure. That last condition on the October 2019 variance petition was for the petitioner work with the Monroe County Planning Staff to ensure the placement of the attached 1-car garage does not encroach into any easements on the property. Upon review of the site plan that they had an as-built they had submitted at that time for the 1-car garage that was meeting that condition. If the variance request of the garage is approved, the petitioner is required to meet Improvement Location Permit requirements, including setbacks and all of the design standards for construction of the new 560' square foot attached 2-car garage. If this variance petition is denied, the petitioner retains the

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ability to construct the 13' by 20' attached garage as approved and represented in the original variance petition that was approved in October. This property is located on North Tunnel Road, out by Lake Lemon. It is zoned Suburban Residential. Some of the other surrounding zones are Forest Reserve but also Suburban Residential following along Tunnel Road. The Comprehensive Plan has it labeled as Rural Residential. Here we have the site conditions map that shows the steep slopes in the area as well as the floodplain. I believe in the original variance petition for the home they had received a LOMA. I would have to double check on that but I believe that this map here does not represent the correct location of the floodplain. Here is the slope map. As you can see all of the property is within the non-buildable area of greater than 15 percent slope. Now here we have some photographs of the site. On the top left photo in the right of that photo is Tunnel Road so this gravel offshoot comes down to this shared driveway of all of these house along this stretch of Tunnel Road here. In the bottom right photograph you can see the retaining wall that is immediately across from the petition site and then more of these photographs here are of the current home that received the variance originally and then the plan is to construct the 2-car garage attached to the left of this home, kind of in that area where the parking space now. But also connecting to the home. Here are some more photographs of that area in general and some more photographs of the kind of grade that is present here and the kind of tight squeeze that is present. Some more photographs here. The bottom right is the other entrance to this gravel road offshoot, the shared driveway that connects to North Tunnel Road. Here is an aerial photograph of the home. On the left of the home in this photograph is the shed that was unpermitted. They did receive variance approval for that shed in the October meeting. So, that is all said and done. Now here we have the consent letter from the petitioner and the letter to the Board of Zoning Appeals by the builder who is here and is present. Here we have the site plan that identifies the larger 2-car garage versus that small 1-car garage that was originally approved in the variance. Here are some more construction plans that show the type of grade that they are working with and the schematics for they plan to attach it to the home, that kind of thing. All of this material is in your packet as well and I have distributed to you the letter of remonstrance from the neighbor. I believe his name is Michael Klitzing. I am not sure if he is here this evening but he wanted me to send you guys this letter. There has been a lot of discussion about the drainage issues in this area. That is why a condition for the approval of the MS4 Coordinator was attached to the previous variance petition. If we are looking to approve this petition tonight we will probably want to take a close look at drainage issues. Overall, staff recommends denial of the design standards variance to Chapter 804 for the Buildable Area requirement, based on the findings of fact, specifically Finding C, regarding practical difficulty. This was the same recommendation we made for the first variance in October for the 1-car garage, just based on practical difficulty. I will now take any questions that you have.

RECOMMENDED MOTIONS:

Deny the design standards variance to the Buildable Area standard for the request for an enlarged attached garage in Chapter 804 based on the findings of fact, specifically finding C, regarding practical difficulty.

FINDINGS OF FACT:

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

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

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

Findings:

- Approval of the variance would allow the petitioner to build a structure outside of Buildable Area, in an area with slope 15% or greater (as defined in Chapter 825 Area 2 Regulations);
- The site is not in a platted subdivision;
- The site gains access via N Tunnel Road, a gravel road;
- The site currently maintains a recently (16-R1-73) constructed single family residence;
- The proposed two-car garage addition is 560 square feet;
- The site is adjacent to residential uses;
- The site has FEMA floodplain on the north side of the lot;
- The site is adjacent to Lake Lemon, which can be considered a natural or scenic area;
- 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 site gains access via N Tunnel Road, a gravel road;
- N Tunnel Road is designated as a Local Road;
- The new structure will not interfere with the current approved septic system;
- The petitioner submitted a drainage plan, which was found suitable by the MS4 Operator, for the previous variance petition that permitted the 260 square foot one-car garage. If approved, the petitioner would need to submit new a drainage plan for approval by the MS4 Operator that reflects the new larger attached garage;
- 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 rezone the property; and,

Findings:

- See Findings under Section A(1);
- The site is zoned Suburban Residential (SR);
- The character of the Suburban Residential (SR) District is defined as that which is

primarily intended for existing, possibly nonconforming, recorded single family residential subdivisions and lots of record. Its purposes are to accommodate existing, substandard subdivision developments and lots, to permit the build-out of single family residential uses in those developments and lots, to encourage the development of sanitary sewer systems for the existing development in the Lake Lemon area, to discourage the development of nonresidential uses, to protect environmentally sensitive areas, such as floodplain, karst, and steep slopes, and to maintain the character of the surrounding neighborhood. Therefore, the number of uses permitted in the SR District is limited. Some uses are conditionally permitted. The conditions placed on these uses are to insure their compatibility with the residential uses. The need for expanding this district beyond the areas designated on the Official Zone Maps on the date of the adoption of the zoning regulations is not anticipated or encouraged.

- Most of the surrounding properties are zoned Suburban Residential (SR);
- The proposed attached two-car garage would meet density, bulk, setback and area standards for Suburban Residential (SR);
- The proposed attached two-car garage meets all other requirements from Chapter 804-4(E), excluding the 15% slope requirement;
- The site is an existing parcel of record;
- 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;
- The variance from slope requirements only applies to the proposed attached two-car garage structure. Any future expansion on this site would require a buildable area variance at a minimum;
- A variance from the slope requirements was granted for the construction of current single family residence in May 2016;
- Conclusion: The specific purposes of the design standard sought to be varied would be satisfied;

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

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

Findings:

- See Findings under Section A and B(1);
- 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:

- For the garage addition proposal, practical difficulties do not exist on the property as the site in its current configuration as built maintains all functionality as a single family residence. Additionally, the petitioner has already received approval for a design standards variance to the Chapter 804 Buildable Area Requirement for the purposes of constructing a smaller 260 square foot attached one-car garage. Although there are no other locations on the property that are suitable for the construction of the attached two-car garage within the Zoning Ordinance’s Buildable Area standard, the current use of the property as a single family residence is unaffected whether or not a two-car garage is permitted to be built on site.

The Board shall have the authority to impose specific conditions as part of its approval in order to protect the public health, and for reasons of safety, comfort and convenience. Variance approval applies to the subject property and may be transferred with ownership of the subject property subject to the provisions and conditions prescribed by or made pursuant to the Zoning Ordinance.

The Board must establish favorable finding for all three criteria in order to legally approve a design standards variance.

QUESTIONS FOR STAFF – 1912-VAR-72 - Cummins

Kaczmarczyk: Any questions for Drew?

Clements: I don’t have any questions?

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Kaczmarczyk: Bernie? Mr. McArdle, would you like to speak? Pleasure to see you again.

PETITIONER/PETITIONER'S REPRESENTATIVE – 1912-VAR-72 – Cummins

Kaczmarczyk: Sign in please.

McArdle: I am Dave McArdle. I am the builder.

Kaczmarczyk: Sir, I need to swear you in first.

McArdle: Excuse me?

Kaczmarczyk: I need to swear you in first.

McArdle: I can't hear you.

Kaczmarczyk: Raise your hand so I can swear you in. Do you swear to tell the truth and nothing but the truth?

McArdle: Yes.

Kaczmarczyk: Thank you.

McArdle: I just wanted to explain the reason for the homeowner once they went through the process of trying to get an appeal to build this original garage, they were under the assumption that it wasn't hard to do and I advised them that it is hard to do. They thought that down the road they may want to build another garage off of the back of this house and I told them you are lucky to get to build this one. We thought that we could make it bigger so that they don't ever have to do it again. We have an accepted drainage plan. We aren't encroaching on any of the setbacks. We are basically 7' feet wider and 8' feet deeper. The only argument that I can maybe make is the fact that we went deeper will take away from the slope from front of garage to back of garage. Since we are stretching it another 8' that's that much less steep that it will need to be which will help with the drainage even more than the previous one that was approved. If that makes sense.

Kaczmarczyk: Any questions?

Clements: I have no questions.

Guerrettaz: Just so I am understanding, so your client said once you went through and they saw what the footprint was going to be, what they were going to be able to use it for, let's go ahead and get a variance to try to make it bigger for what we think we are going to need in the future. Is that pretty close?

McArdle: Correct. Yes and the simple fact was we realized, myself included, that this is difficult to do. I had to convince a lot of people to allow us to do just the 1-car garage. I just told them there is no way you are going to be able to do anything else in the future and what they really need is

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storage. They don't even need the 2-car garage. They just need storage. If you remember the pictures they have boats and everything is out in the yard. They just want to put it up.

Guerrettaz: Can I ask staff a question? On the drainage on the side, it looks like where the builder and the petitioners have I guess the northwest corner of the garage, there is a setback there. What does the drainage do there? Yeah, that would be fine. Sorry.

Kaczmarczyk: Please state your name for the record.

Quillman: Terry Quillman.

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

Quillman: I do. Ask me again, Bernie?

Guerrettaz: I am wondering I think it is the north side, excuse me, but on the side where the new garage is going that is right up against the setback line. Is that correct?

Quillman: It is very tight in there. I still have a few reservations about plan so it is probably best that you asked this question. When I looked at it and worked out an inlet location and a pipe draining down to the lake, I was looking at the 1-car garage and it looked tight to me at the time. If they are coming in with second car or wider garage it is really going to be crowding it and I would like to see a revised drawing on that. It is really getting tight between that unit and the next one to the west.

Guerrettaz: I am trying to read here what the setback from the west property line? The dimension. Is it 5?

Myers: I think so, in the Suburban Residential zoning district, yes. It is 5.

Guerrettaz: So, what you are thinking is that on that side where the garage is going that I may be tight to maintain the drainage.

Quillman: Just to get the pipe in there and what I am seeing there is a large tree out in the front toward the lake and I don't see an alignment where they can get a pipe down there. I would just like to see that addressed.

Guerrettaz: Sure. Are the gables going toward the north/south or sorry, Dave, or is the roof line sloping toward the property?

McArdle: It is a pitched roof. In the top left corner you can see a view, so it is sloping in all directions.

Guerrettaz: There will be gutters and downspouts.

McArdle: (Inaudible).

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Kaczmarczyk: Any further questions?

Guerrettaz: That is it.

Kaczmarczyk: Anyone else here who would like to speak on behalf of the petition? Seeing none. Is there anyone here who would like to speak against the petition?

SUPPORTERS –1912-VAR-72 – Cummins: None

FURTHER SUPPORTERS – 1912-VAR-72 – Cummins: None

REMONSTRATORS - 1912-VAR-72 - Cummins

Kaczmarczyk: Please state your name for the record, sir.

Klitzing: Michael Klitzing.

Kaczmarczyk: Do you swear to tell the truth, raise your hand, do you swear to tell the truth and nothing but the truth?

Klitzing: I do.

Kaczmarczyk: Thank you.

Klitzing: I come under remonstrance but remonstrance is probably too strong of a word. Concerned would be more appropriate word for my position on the proposed variance. As stated in the letter, I wasn't sure my job was going to allow me to be at this meeting but fortunately I was able to make some last minute adjustments to come. So, that is why I presented the letter to Drew to provide to you tonight. I do have concerns about this. The neighbors, Mr. and Mrs. Cummins that are making the variance request I don't particularly have concerns about them. They have always been great neighbors. I appreciate the improvements that they have made. What used to be on that lot was a former, basically trailer that had a tree go through it and it was completely a nuisance. They have certainly made improvements to the neighborhoods and I am appreciative of them. Likewise, I didn't necessarily have any concerns about, well, I shouldn't say I didn't have any concerns, but I wasn't opposed to their construction of a garage. I understand they want to have a place where potentially they can long-term move full time out to the lake and have a place to park their cars. Again, didn't have an objection to the concept of a garage. But I do have concerns based on interacts that I have had with Mr. McArdle. On August 2nd, which was a Friday at approximately 4 pm, I did have a meeting with other individuals to discuss the respective plan. My property is immediately to the east on the side that the proposed attached garage is going to be constructed on and basically we were discussing our respective plans. This board in September granted a variance for a house that is currently under construction on my lot and as indicated in the letter that I provided, we have had some drainage issues. The lot, the Cummins lot, the petitioner's lot, originally was at or below the grade of the lot that I have and today it is significantly higher, which means there is a lot more water that is directed toward my lot that prior to construction, the originally construction of the Cummins home, was going the opposite direction. I understand based

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on my conversations with the Planning Department that that might be legal under state law. But I certainly don't think it is the most ethical thing to do. That being said, the house that was there it did cause damage to it. It caused some damage to a retaining wall that wasn't in the best shape. I will be the first person to admit it but because of the additional water it certainly didn't help the previous house that was there. Again, kind of a moot point since we are building a new one but it doesn't change the fact that there is a lot of water coming our direction. I am certainly glad that the Planning Department and this Board provided extra provisions to ensure that drainage both on petitioner's property as well as my property when I was the petitioner were addressed. So, I am thankful for that. But it is still a concern and hearing what the previous gentleman said makes it a greater concern for me. The tree that was referenced, that's my tree, well it's right on the property line. The property lines are basically parallelograms. That tree is right on the corner, if it goes straight out on that that is going across that tree, which is predominantly on my property line and we have taken efforts to preserve that tree and if we have any more disruption against the roots on that tulip popular it certainly is going to cause damage and ultimately the death of that tree. So, a concern to me, something that we were certainly were striving to try to preserve as many of the existing trees in place. But what is most disturbing to me was just some of the statements that were ultimately made at that August 2nd meeting and really some of the same ones that were made tonight. Effectively, the conversation that we had between myself, David, the co-owner of my property, my builder, Mr. McArdle, and the petitioners was that if we get it approved, then we are going to build what we want and effectively that is what appears to have occurred with the original house. That's what appears too occurred or attempted to occur now with the larger garage and that larger garage, I mean, recognize there is going to be a garage there. Again, I didn't remonstrate against the original garage and I am not saying that I am remonstrating again this, just expressing concerns. But at the same point, it is getting ever and ever closer, it is right on the property line now, the setback components of it and it is getting further towards the shared drive. Again, we can live with that but I have concerns based on the track record. Is what's approved if you grant the variance going to be truly what is built? If you chose to grant the variance, again, your choice to do I just request that there be extra efforts and requirements placed to ensure that what is constructed is truly what is permitted to be constructed and those are the proposed additional terms. Some of them may not be applicable based on actions that have already taken place but most specifically, before the footings are actually poured, I think there needs to be a survey that says it is where it has been approved to be poured and then after everything is done I think there needs to be another as built survey. So, those are my recommendations. Like I said, while I am coming before you in the remonstrance component, I wasn't strong enough to come during the support but if you had a section that was concerned but not remonstrance that would be the category that I am coming to you before for your consideration. I am happy to address any questions that you may have.

Kaczmarczyk: Any questions?

Clements: I don't have any.

Kaczmarczyk: Thank you sir.

Guerrettaz: How big is that tulip tree?

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Klitzing: That tulip tree is around probably about roughly 20 inch diameter, if not a little bit larger.
Guerrettaz: Thinking back, you may have said it but were you here for a variance?

Klitzing: I was. I was here in September. This property originally had 3 trees right at the corner and then a couple additional trees that were right in the center of our lot. Because of where my septic needs to go unfortunately we had to lose those trees because we were going to disrupt too much of the root system with the installation of the septic. But we were trying to preserve as many of the mature trees as possible and this particular one that is probably about two-thirds on my side and a third on the petitioner's side was one of the ones that we were trying to save.

Guerrettaz: Just curious, about how far from that tree is your improvements going to be?

Klitzing: Mine are outside the drip line so probably about easily and I am not always the best at judging distance but I would say at least 20, 25 to 30 feet. But definitely outside the drip line. Now, I am a little concerned there was a little disruption of soil on top of it but we didn't do any digging, there was just a little soil put on top of the roots there.

Guerrettaz: On the, pardon me for not being able to pronounce your name, Klitzing?

Klitzing: Correct.

Guerrettaz: On Mr. Klitzing's proposed conditions I am looking at these and Number 3; petitioner submit an as built survey of the property that includes the storage shed addition on the east side of the house. That has already been done, hasn't it?

Myers: Yes, that survey has been completed.

Guerrettaz: Ok because there is another line in there that says and then of the new garage. There is another one here for the after-the-fact Improvement Location Permit for the storage shed. That's been done.

Myers: Yes, the variance petition has been approved for that after-the-fact.

Guerrettaz: I am just looking at these conditions and seeing which ones have already been addressed as a part of what the other petition was and what staff has said has been completed. And that the petitioner complete a drainage plan but has done it or the petitioner has done it but that will have to be revised with the additional footprint if it's approved.

Myers: Correct and to offer some clarity here, with all of the conditions on the previous variance, those needed to be completed and approved before we saw a Building Permit come in. So, all of those conditions on the previous variance were good to go and then they were able to submit a permit at that time and then once we received the permit that is when we realized the size had changed. So, that made a difference to all of those conditions that had been previously approved.

Kaczmarczyk: Any further questions?

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Clements: I don't have any questions I just have a comment. I am just concerned about the impacts on one persons on neighbors regarding drainage. Even though for the current property a drainage plan might be able to be designed that could fit within the constraints of the easements on the property what we don't know is the effects it might have on the neighboring properties and that's one of the things that I think about. So, that is a comment and not a question.

Kaczmarczyk: We need to back up a little bit. Is there anyone else here that wishes to speak against the petition?

Clements: Sorry. I don't have to repeat that do I?

Kaczmarczyk: No, you are fine.

ADDITIONAL QUESTIONS FOR STAFF – 1912-VAR-72 – Cummins

Guerrettaz: When we looked at this petition before and staff recommended denying it, which is a pretty high bar, I think, to get over the one thing that I saw was the fact that up against the lake and just to meet the accommodations of the family getting as much under roof as possible is probably a positive thing. What I am wondering is if Terry would consider a motion where we allotted up to the dimensions of what they are proposing on their building plan subject to a drainage plan that meets your department's approval. If that would be something, yeah, I am sorry, go ahead. Sorry about that Terry.

Quillman: His original plan has storm inlet up on the in the drive and then a pipe going down. With this expansion I saw that really difficult to maintain. I will put the burden back on them to come back with a plan. I am fine with that. My concern is there is, I don't know, 20 or 30 foot drop between these two homes, so it is going to be very difficult to hold the soil. That is what I liked about his initial plan was it was incased in a storm sewer and went out. They were able to outlet it down closer to the lake where there would be less opportunity for erosion. To answer your question, I would say put the burden back on them. I am fine with it.

Guerrettaz: I am not asking, what I am trying to do is think of way to articulate a motion that would put the burden back on the petitioner. With your final review, but not just put a blank check out there that you know, we vote and doesn't consider the fact you need to make sure that it's a plan that is working.

Quillman: What would happen if you made the vote and they are really not able to do anything that is reasonable?

Guerrettaz: Beg your pardon?

Quillman: What would happen if you would make that condition and they are not able to come up with something that is reasonable? I don't really have a good feel for how much space. Did I hear a 5 foot side yard setback?

Clements: Yes.

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Quillman: So, I am going to assume there is 5 on the other side. I also see it looks like that structure is suspended, they could may be put a pipe under it. I am open to these ideas.

Guerrettaz: Right and it is certainly the petitioner's burden to prove to you or to your department that something can be managed.

Quillman: I am fine with that Bernie.

Guerrettaz: Ok.

McArdle: Can I ask a question?

Guerrettaz: Sure.

McArdle: The current drainage approval plan was of the new plan.

Quillman: That was, well, we can look at it. Was it you a talked to on it?

McArdle: I don't know if it was you or one of the other guys. I know that the current approved drainage plan is with the current size.

Quillman: I think it probably was you. You had proposed a storm inlet, a yard inlet up on the level spot. You were going to catch it and run it down the side.

McArdle: Yes. If you look at the property line, the front left corner of the new garage structure actually has quite a bit more setback. I do have plenty of room.

Clements: Could you repeat that because I see it touching the setback line in the drawing?

McArdle: That inlet is basically a catch basin for the water to run into there is plenty of room here. Here is the setback line. The building is quite a bit further back from that, so there is plenty of room here and the approved drainage plan pipes it down and another catch basin at the bottom drains into the water. What has been approved drainage wise is the new plan.

Guerrettaz: So, there wouldn't be much work for you revise it if it was necessary, if Mr. Quillman...

McArdle: Not at all but I just wanted to make that clear for you both.

Quillman: Bernie, I might add that I was under the impression that this was the narrower garage and after I had spoken with them on their design that they had come back and expanded it further. So, I am open to it. I just want to see it.

Guerrettaz: I think what we can do, we can make a motion that will satisfy what we think we are have and what we are going to have and hopefully they will match up.

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McArdle: Can I make one more point?

Guerrettaz: I am ok with that.

Clements: Sure.

McArdle: Sorry to take so much time with this. The house next to it that the gentleman was up talking about, they built their house at the 5 foot setback and if you can imagine from wall to wall right here, we have slope from the ceiling down to the floor between the two structures. On their side they have cut half way back so they could have a window right here and I told them we are both going to try and have a 10 foot walkway between the two buildings. By cutting that to have a window there they have kind of caused their own problem and I warned them at that meeting by doing that you are creating a place for all of this water to go. So, I don't think it is a good argument that all of a sudden we are dumping on the neighbor. The neighbor is building a house right there that I don't feel we are building on.

Kaczmarczyk: Thank you. Would you like to speak, sir?

Wilson: I have a question and I hope you know the answer to this. Where is the septic system in relation to where the water would be going to being directed from us above?

McArdle: The septic is in the back. Here and there is a tank here and it exists the house and is piped down to here. So, it's out of the way.

Wilson: But it is up front right towards the lake?

Clements: Yes.

McArdle: Yes.

Wilson: How close will that drainage outfall, basically you want to take it collection port down below, right?

McArdle: Right.

Wilson: How close is that going to be to the septic system?

McArdle: Not at all close. It is down here.

Wilson: Is it a Presby system?

McArdle: I believe so, yes.

Wilson: Do you know whether there is a perimeter drain with it?

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McArdle: Yes, there is.

Wilson: Ok.

Clements: David?

Schilling: That is what sort of concerned Bernie about putting this decision on Terry as to where this is approved or not. I guess I would recommend if possible to continue this if you are interested to have the report presented to the full board so the board can make a determination on whether they are satisfied with that system, based on Terry's recommendation one way or the other.

Guerrettaz: What I was going to suggest we do is make a motion to give an approval up to but not exceeding what is shown on the plan. But I think that is ok. Frankly, I think that is alright. The petitioner is going to have to come back but we can table this until the next meeting.

Kaczmarczyk: I believe Mr. Klitzing wanted to speak up and say something.

Klitzing: The one thing that I want to take exception to is basically we were asked to alter the design or our design intent of our house, our new house based on how significantly the slope and grade of the petitioner's house is today compared to how it was before the petitioner's house was built. Basically, our area was, yeah, we dug out for the foundation for our house but where the window is going to be located closest to the drive is actually on the second floor and it is foundation all the way to the top. Where the window is located on the lower level is closest to the lake in the corner of the house and not at a slope that is higher than what it was originally. So, I take exception to the fact that had we done something differently then this would be a moot point. It is not a moot point. The drainage issues that we have, have certainly changed significantly since the original development of it and I am frustrated with that. I do think that this is a big picture thing but I do think that when projects are proposed that there needs to be an assessment of how this will impact the neighbors. But that is probably something that is above all of our pay grades but at the same point, it is a concern. I am concerned as I am hearing this. Hopefully the drainage plan that has been proposed is based on, that has been reviewed by Terry is the larger structure. But again the corner of this new structure closest to the lake is right based on the illustration up there, right on the 5 foot setback. If it goes underneath the structure then ok. If it's going into the 5 foot setback then, you know, I have concerns again. Thank you.

Kaczmarczyk: Thank you. Ok.

FURTHER QUESTIONS FOR STAFF – 1912-VAR-72 – Cummins

Guerrettaz: **In the matter of case number 1912-VAR-72, Robert and Kathryn Cummins Buildable Area requirements of Chapter 804, variance request, I move that we table this to the,** do I have to detail a date or can I just say future meeting?

Wilson: February meeting would be fine.

Guerrettaz: Well, what I am saying is if it takes them a little bit more than a month for them to get it under control, can I just say for a future meeting?

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Schilling: You can but they would have to re-advertise when they get it ready.

Guerrettaz: Ok. **I move that we forward this to the February 2020 meeting, in order for the petitioner to validate the Drainage Engineer's drainage concerns and to make any modifications that may be necessary to alter the petition the way that the concerns of the Drainage Department's staff is satisfied.**

Clements: I **second** the motion.

Wilson: The motion is in regard to petition 1912-VAR-72, Cummins Buildable Area Version II Variance. The motion is to table the petition to the February 2020 meeting. A vote in favor is a vote to approve the continuance. Bernie Guerrettaz?

Guerrettaz: Yes.

Wilson: Mary Beth Kaczmarczyk?

Kaczmarczyk: Yes.

Wilson: Margaret Clements?

Clements: Yes.

Wilson: Ok. This will be on the February agenda. In the event that the report is not finished, the matter can be continued by staff at that time. But this way, we won't have to re-advertise.

The motion in case 1912-VAR-72, Cummins Version II Buildable Area Variance to Chapter 804, in favor of tabling this petition and moving it to the February 2020 meeting, carried unanimously (3-0).

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NEW BUSINESS

3. 1912-VAR-73 Mullis Buildable Area Variance to Chapter 804

4. 1912-VAR-74 Mullis ECO Area 3 Variance to Chapter 825

One (1) 1.78 +/- acre parcel in Benton South Township, Section 17 at 6340 N Viking Ridge RD. **Zoned SR & ECO3.**

BOARD ACTION: Kaczmarczyk introduced the petition.

STAFF ACTION:

Myers: Here are a couple letters that were submitted after the packet came out. Those are in support of the variance. Ok, this is for 2 design standards variances. One to Buildable Area, 15 percent slope requirement of Chapter 804 and one for the ECO Area 3, 18 percent slope requirement to Chapter 825. This is the Mullis Buildable Area Variance and the Mullis ECO Area 3 Variance. Here we have some summary and background for you. The petitioner requested these 2 design standards variances from Chapter 804 and Chapter 825 in order to finalize the construction of a 2 level deck that was built in steep slope area without an Improvement Location Permit or a Building Permit. The petitioner states that a Building Permit is not necessary as construction of the deck falls under the log cabin rule. None the less the petitioner did apply for a Building Permit in September of 2019, approximately 11 months after the construction of the deck had already begun. The petitioner posted photos of the particularly constructed deck in October of 2019 from their Facebook page, Mullis Construction and Contracting, LLC. The petitioner applied for a 3 level deck permit in September of 2019 and in October the petitioner was notified that the proposed location was in a steep slope area and classified as non-buildable without first seeking a variance approval. A few days later in October the Monroe County Planning Staff received a voicemail from petitioner stating that they were going to hold off on the deck for the time being and then later in that same month, Planning Staff performed a site visit after receiving an anonymous complaint that the deck was already built and noted that the construction of the 2 level deck was in steep slope area. A December 2016 permit was posted on site for a pole barn with “deck” added to it. The deck is not listed in any paperwork from the original December 2016 application for the pole barn. The pole barn application did not require any variances because that structure was built in the buildable area that exhibits less than 15 percent slope. Pending variance approval the petitioner plans to complete construction of the approximately 528’ square foot 2 level deck. The existing uncompleted deck did not receive an Improvement Location Permit and resides in the area greater than 18 percent slope. Therefore, the deck structure is not permitted without variance approvals and an after-the-fact Improvement Location Permit. The deck must receive variance approval from Chapter 804 and Chapter 825 for Area 3 Environmental Constraints Overlay. If either variance petition is denied, the petitioner must decommission the deck structure through the appropriate demolition permit process. The petition site is located at 6340 North Viking Ridge Road in Benton Township, Section 17. The property is zoned Suburban Residential and is in the Environmental Constraints Overlay Area 3. The adjoining parcels are Suburban Residential as well and Conservation Residential. The surrounding uses are mostly single-family residential. The Comprehensive Plan has it designated as Rural Residential and the site conditions here you can really see the constraints from the steep slope in this area. You can see the ravine that cuts through the middle of the property. The home is in the top right section of the property lines. You can see it there. Here is the slope map. You can see that a lot of the area toward the southwest of the home

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is in that steep slopes greater than 15 percent and 18 percent where the deck has been located. Here we have some site photos. The first one is facing southeast frontage on North Viking Road and the bottom right is facing northwest frontage on North Viking Road as well. The top left photograph is of the home and the detached garage/pole barn that received the 2016 permit, which was built in the buildable area. You can see the driveway cut that comes down behind the home where the deck has been constructed. This is coming down the driveway and getting an angle where the deck has been located and here are some more photographs of the deck and the trail that comes down to the deck. You can really see how steep it is over here in these photographs. Just some more photographs here of the deck itself. You can kind of see how it is not completely finished because the stair cuts have not been completed. Here is a bird's eye view on this photograph I believe is from 2017, so you can't see any of the deck construction here but it is predominantly where that southwest of the home where that white fence kind of juts out, that is approximately the location where the deck has been located. Here is the site plan that was submitted. It gives you some idea of the dimensions of the deck and its respective distance from the pole barn and the single-family residence. I kind of zoomed in here a little bit to get better idea and you can see those numbers of the deck structure. Here we have the enforcement notice from the County Commissioners. Here we have the evidence of the Facebook page posting where the deck was beginning construction without an Improvement Location Permit or a Building Permit and the photograph to the right is of the Building Permit that was edited to say "deck" and that was 2016 Building Permit for a pole barn. Here is email correspondence with the Zoning Inspector and the petitioner that identified that their application for a permit for the deck in the steep slope area would require a variance. As I stated earlier it was then said by the petitioner that they were going to hold off on starting construction of the deck at that time. Overall, staff recommends denial of the design standards variance to Chapter 804, for Buildable Area 15 percent slope requirement, based on the findings of fact specifically Finding C, regarding practical difficulty. The same goes for the design standards variance to Chapter 825, for ECO Area 3, regarding practical difficulty with respect to the use of the property as residential is not affected by the presence or not presence of the deck. I will now take any questions.

RECOMMENDED MOTIONS

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

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

FINDINGS OF FACT: Buildable Area (15% Slope)

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

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

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

Findings:

- Approval of the variance would allow the petitioner to complete the construction of an

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approximately 528 sq. ft. two-level deck located outside of buildable area;

- The site gains access via N Viking Ridge RD;
- Construction of the deck began in October 2018 according to the Facebook photos in Exhibit 3 without an Improvement Location Permit;
- The petition site is located within Area 3 of the Environmental Constraints Overlay;
- The deck is located within the >15% slope non-buildable area as defined in Chapter 804-4(E);
- The deck is located within the >18% slope non-buildable area as defined in Chapter 825-4(C);
- The construction of the deck in this location requires two variances, one from Chapter 804-4(E) and one from Chapter 825-4(C);
- The construction of the deck did not require a Rule 5 nor does it appear that the deck required removal of major trees on the property;
- The deck will lead to vegetation loss under the covered portion, which may lead to future soil erosion. The petitioner did place large rocks at the bottom of the deck as a stabilization measure;
- There is a ravine that runs along the south portion of the property;
- 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:

- N Viking Ridge Road is a Local Road maintained by the County Highway Department;
- The septic system is on the north side of the single family residence and therefore will not interfere with the construction of the deck;
- Conclusion: It would not interfere with or make more dangerous, difficult, or costly, the use, installation, or maintenance of existing or planned transportation and utility facilities;

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

Findings:

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

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

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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 deck construction meets setbacks from all property lines;
- Conclusion: Approval of the variance would satisfy the design standard sought to be varied.

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

Findings:

- See Findings under Section A(1);
- Drainage on the property runs south into a ravine that cuts through the middle of the property and continues south;
- The construction of the 528 sq. ft. deck allows for spaces/gaps between adjacent boards that provide storm water drainage;
- There is no FEMA floodplain on the site;
- Conclusion: It would not promote conditions detrimental to the use and enjoyment of other properties in the area.

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

Findings:

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

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

Findings:

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- Construction of the deck was begun without the issuance of an Improvement Location Permit by the Planning Department;
- Resuming construction of the deck requires the approval of two variances, which are the minimum necessary to permit the completion of the deck;
- For the deck structure, **practical difficulties do not exist** as the site in its current configuration maintains all functionality as a single family residence. Additionally, the petitioner attempted to acquire an Improvement Location Permit, but was notified of the slope constraints at the proposed deck location. The petitioner had already constructed the deck without an Improvement Location Permit. Although the nature of a two-level deck requires construction in steep slope areas, the current use of the property as a single family residence remains unaffected whether or not a two-level deck is permitted to be built on site.

FINDINGS OF FACT: Environmental Constraints Overlay Area 3 (ECO3) – (18% Slope) 812-6 Standards for Design Standards Variance Approval: In order to approve an application for a design standards variance, the Board must find that:

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

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

Findings:

- Approval of the variance would allow the petitioner to complete the construction of an approximately 528 sq. ft. two-level deck located outside of buildable area;
- The site gains access via N Viking Ridge RD;
- Construction of the deck began in October 2018 without an Improvement Location Permit;
- The petition site is located in Area 3 of the Environmental Constraints Overlay;
- The deck is located within the >15% slope non-buildable area as defined in Chapter 804-4(E);
- The deck is located within the >18% slope non-buildable area as defined in Chapter 825-4(C);
- The construction of the deck in this location requires two variances, one from Chapter 804-4(E) and one from Chapter 825-4(C);
- The construction of the deck did not require a Rule 5 nor does it appear that the deck required removal of major trees on the property;
- The deck will lead to vegetation loss under the covered portion, which may lead to future soil erosion. The petitioner did place large rocks at the bottom of the deck as a stabilization measure;
- There is a ravine that runs along the south portion of the property;
- 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:

- N Viking Ridge Road is a Local Road maintained by the County Highway Department;
- The septic system is on the north side of the single family residence and therefore will not interfere with the construction of the deck;
- Conclusion: It would not interfere with or make more dangerous, difficult, or costly, the use, installation, or maintenance of existing or planned transportation and utility facilities;

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

Findings:

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

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

Findings:

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

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

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

Findings:

- See Findings under Section A(1);
- The deck construction meets setbacks from all property lines;
- 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:

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- See Findings under Section A(1);
- Drainage on the property runs south into a ravine that cuts through the middle of the property and continues south;
- The construction of the 528 sq. ft. deck allows for spaces/gaps between adjacent boards that provide storm water drainage;
- There is no FEMA floodplain on the site;
- Conclusion: It would not promote conditions detrimental to the use and enjoyment of other properties in the area.

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

Findings:

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

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

Findings:

- Construction of the deck was begun without the issuance of an Improvement Location Permit by the Planning Department;
- Resuming construction of the deck requires the approval of two variances, which are the minimum necessary to permit the completion of the deck;
- For the deck structure, **practical difficulties do not exist** as the site in its current configuration maintains all functionality as a single family residence. Additionally, the petitioner attempted to acquire an Improvement Location Permit, but was notified of the slope constraints at the proposed deck location. The petitioner went on to begin constructing the deck without an Improvement Location Permit. Although the nature of a two-level deck requires construction in steep slope areas, the current use of the property as a single family residence remains unaffected whether or not a two-level deck is permitted to be built on site.

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

QUESTIONS FOR STAFF – 1912-VAR-73 & 1912-VAR-74 - Mullis

Kaczmarczyk: Any questions for Drew?

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Guerrettaz: The site plan in the presentation is that based on the prior building permit? Is that the current one or is that one that was prior?

Myers: I believe this is what was submitted with the application for the building permit for the deck. At that time when we received this that was the notice that was sent to them saying you would need to pursue a variance in order to place the deck where it is because it is in the steep slopes. In the original 2016 December permit application for the detached garage/pole barn there was no evidence of a deck being pursued in that application.

Kaczmarczyk: So, the deck was added later by we don't know who?

Myers: The deck began construction in 2018 according to their Facebook page.

Kaczmarczyk: The actual word on the permit that was posted.

Myers: That was edited by someone.

Kaczmarczyk: That was edited. Ok, so that is a county document that has been altered.

Myers: Correct.

Kaczmarczyk: Alright, thank you Drew. Any other questions for staff?

Clements: I don't have any. Do you Bernie?

Kaczmarczyk: No questions, ok. Mr. Carmin?

**PETITIONER/PETITIONER'S REPRESENTATIVE –
1912-VAR-73 & 1912-VAR-74 – Mullis**

Carmin: Mike Carmin, representing the petitioner.

Kaczmarczyk: Thank you. You are a lawyer, I don't have to swear you in.

Carmin: Different chair persons do it different. I want to correct a couple of things. There are a number of what I am going to call fringe issues or questions you may have that, as to not prolong this some of this I am not going to address unless you are concerned enough you want to ask about it. I can give answers and some explanation. I am going to address some of those now but certainly not everything that has been commented on tonight or in the staff report. I consider them fringe issues that aren't ultimately germane to the final discussion but we are happy to address those and provide answers or explanations if you wish. I don't mean to put the burden on you but I am going to leave some of this for you to ask questions so that I will respond to those things that are a concern to you. A couple corrections. First of all, the site plan, that was for this variance. Jim Mullis is here and his wife Jennifer. I told him for purposes of this the variance request he needed to prepare something to show what is there and so that was created by Jim and Jennifer, carefully,

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painstakingly, with scaling it, measurements to show everything that is there now. So this was never submitted as part a building permit or plan. This was created for purpose of the variance petition and filed with this petition. That is why the deck shows on this because this is as is now, what is out there. The location of the house. Size of the garage, size of the deck, etcetera. In the staff report there is just minor point that talks about construction started in October. It actually started in March of 2018 but again I don't think that changes anything. It is just that. A little bit misleading, I know it is just how people paraphrase things, Jennifer's call about holding off, was not holding off on starting construction, it was holding off on doing anything more. The deck as you see in these photographs was essentially done as it shows in these photographs as September 24, 2019. It is not done. The bottom stair case going all the way down to the ground needs to be finished off. It needs to have a railing added to it. The only work done in this area after September 24th there was on the upper level what Jim calls the tiki bar. He went ahead and finished removing and cleaned that area off to not leave it partly done, not to leave it less safe. So, it didn't add to the deck or expand the deck. It was removing a small structure on the upper level called a tiki bar that was at one side of the deck. Work did halt. The idea was once it was clear they needed to apply for the variance. We can talk about how we get to where we are almost on every petition on what people know and understand about permits and that. The one thing that didn't come out in the staff report that I think bears significantly on Criteria C, the practical difficulty issue which I think is where your focus is going to be tonight, the staff report and findings of fact on everything else is not harmful and they find to others that is does not interfere, it does not cause harm and so it really gets down to that practical difficulties issue which is where you almost always end up with these variance issues. On that issue, this is Danny Smith Addition II, platted in 1969. In 1969 the concept of slope restrictions, ECO Areas and buildable areas were not even a twinkle in anybody's eye. They were not heard of. There wasn't even a zoning ordinance at that time in Monroe County in 1969. Danny Smith Park is created in the slope area with all that you saw on the map, all of those residential lots, most of which have homes on them. Not all of them. There are still a few vacant lots but home built before anybody ever thought of or heard of restrictions based on slope or based on buildable area sizes. Those are really recent, at least in Monroe County, especially the buildable area one. So, we end up with a residential lot that today if it's being platted you couldn't build any of those on there. Almost none of those lots have the required buildable area. Everything would require a variance to put anything up on those lots for the most part. That is a pretty broad broach but that is the reality of it. You saw the slope map. You saw the red. You saw home many of these lots that the majority of the lots are contained in those sloped areas. You end up with petitioners, Mullis tonight and you are going to see maybe others. I suspect there has been a lot of these done out there that violates slope requirements that nobody thought about it, it didn't come to anyone's attention, things have happened. That is not an excuse. It is just the reality of how things happen sometimes. You have the petition tonight. Looking at the decks, on the one photograph, Drew if you could go back that way, go back one, right there, that is fine, thank you. You see the decks in the photograph, you see the drive off on the photograph on the right side of that. That is the driveway y that comes from the front, down and around the back. It comes into the driveway part near the house and the garage area but it is from a pedestrian standpoint, you don't see any steps. You don't see any stairs. You see a sloped driveway. Access to the back part of this lot, the backyard as such is downhill. Jim can walk it. Jennifer can walk it. His mother cannot. There are people that cannot get into the backyard and use it. When you look at the deck, what is not finished yet is this last set of stairs here. What that does is gives access by constructional sound steps with a rail to allow people to get from the house level down into the backyard area. Because it is largely

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unusable. You have to walk down the driveway and walk on down the slope with no steps, no stairs, no railing or anything. So, there are practical difficulties with use of this lot without adding a feature like this. Could they have just simply built stairs someplace? Yes. But the stairs anyplace would require a variance themselves too, so that doesn't change the need for a variance. To make use of the backyard, they put a picnic table, they put chairs on the driveway, on the paving behind the house in front of the garage to have an outdoor picnic or eat outside. The deck serves a lot of purposes. We like to encourage people. They have a nice, deep lot, a nice from a green space, a nice lot. This is interior to the lot. It is behind the house. It is not visible from anybody else. It is well set in from the side yards on both sides. It is central on the lot and it backs that back part of the lot usable for something more to look out your window or stand on your paved driveway to look at it. So there are a lot of reasons to want the deck, to want the steps there, to make the house more usable as a residence in an area that has a lot of nice green features that are hard to take advantage of and enjoy being elevated as they were. Now, we would certainly like these things to be done in advance. You request the variance, get approvals if possible, then you go build. Had he just come to in advance before the work being done I try to think what you would have done or said. I think you would add a couple conditions about erosion control during the course of construction, about how the deck gets done, the post get set. I can tell you all of those things are done in advance without having to be told. There was great care taken in digging the post holes and that is minimal ground disturbance of post hole only. That was the purpose of the elevated deck. No grading is necessary. Riprap needed to be added anyway. When you saw the one picture there is a lot of riprap at the base of the deck, that needed to be added anyway because before that the water coming down the driveway that is paved and round the house and sheeting off the driveway was cascading out of it so it needed riprap down there anyway to just deal with the water that was draining anyway. So, it was an opportunity to combine remedies. I can talk about the building permit that you asked about earlier and maybe I should just get some of this out and be done with it. First of all, a building permit is not required for this deck. The lot owner doing their own work on their own property there is no building permit required. That building permit that was shown which Jim added the words "and deck", clearly did it after the fact. That building permit for that work was already done. I will just say it, this upper part of the deck was built by Jim and his son. His son shortly after that died and so there is a real emotion issue in wanting to preserve the whole deck but at least that upper level because that is the last thing that he and his son did together. That is why I am talking because Jim is not going to be able to talk and get through it. If you have questions for him he will answer them but I am trying to do the talking for him because he is not going to get through it. He has somebody, a neighbor causing some trouble complaining about different things, anything he was doing. While the deck as all ready, that building permit, that was already done and he just still happened to have that permit. Getting complaints about the deck, the work was already done as you see it so he thought, ok, I will just shut them up. So, he wrote deck on there and posted it where it could be seen thinking that would stop them. Leave me alone, I don't need to deal with you. Well, shouldn't have done. It didn't change anything. None of the work was done pursuant to that permit because there is no permit required for this. It should not have been altered, it was. It ultimately doesn't have any bearing on this and hope we can put that issue aside. I always hate to offer compromise positions because one compromise would be to preserve part of the deck, simply the lower interior of it. I hope you do not do that but certainly the upper tier has an emotional issue and family issue has more meaning to it because of the son doing that construction with him. But we would like to keep the whole deck as you see it and be able to finish out, the stairway, finish off the stairs, and add the railing so that people can go from

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the house, across the deck, down the stairs and into the backyard for use of it there. I believe that there are practical difficulties there. I know the staff report says no practical difficulties. But we need to look at existing lots that were platted in sloped areas in 1969 and you think how do you use this lot and develop it? If this were on flat ground, no slope and buildable area questions, would you have any hesitation to say that is a nice addition to the house, that deck and its useful and it encourages use of the property in a reasonable manner and responsible manner. I don't think you would have any question about it. But the problem is we are on a sloped lot which we can't do anything about. We can sell the house and move someplace else I guess but that doesn't change the facts. We have a deck that was built without getting the proper approvals up front because they require variances. I can't undo the timing and the chronology in which things happened. I can assure you and I know Jim will if he needs to come up and talk that other that removal of that tiki bar and finish that area off so that it wasn't unsafe there was no work done after this issue surfaced and he needed the variances. That was in September and they stopped and that's why it remains in non-completed state waiting to see what gets approved or not. But ask that you find that there are practical difficulties with use of this lot, presented by the existing conditions that were created at time before the ordinances ever was on anybody's radar at all let alone actually being adopted and incorporated. That is a reasonable use of the property to add the deck and staircase down to the lower level and that the variance is necessary to allow that to happen. I would ask you to approve the variance to preserve the deck but certainly allow it to be finished with the appropriate stair railing. For safety we can't leave it as it is. It needs to be approved and finished or it needs to be removed but we would ask to keep it. But we would ask to be able to keep it, rather not go back to accessibility to the back part of the yard by walking on a sloped driveway. Because there are no staircases anywhere else and any staircase is going to be in a non-buildable area it would still require a variance. I would ask for your support of approval of the variance. Questions?

Kaczmarczyk: Does anyone have any questions? Margaret?

Clements: I don't have any questions.

Guerrettaz: The driveway on the lower right photo is that a gravel driveway?

Carmin: Yeah, it is paved at the upper but once it comes on down and around it is not paved.

Guerrettaz: With the construction of the, is that a pole barn right there? It's a nice looking pole barn. Is that a pole barn?

Carmin: The garage here?

Guerrettaz: Yes.

Carmin: Is that a pole barn?

Guerrettaz: It says it's a pole barn that is what I just making sure.

Mullis: Are you talking about this?

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Guerrettaz: Yes.

Mullis: Yes, it's my pole barn.

Guerrettaz: Ok, in the photo it wasn't paved but it's paved in that...

Carmin: This is all paved.

Guerrettaz: Yeah, was that slope built up as a part of the work with the pole barn?

Carmin: Come on up, Jim.

Guerrettaz: We won't go too fast.

Clements: We are very sorry for your loss.

Mullis: Thank you and I don't mean to be so emotional.

Clements: It happens. We understand.

Guerrettaz: Mr. Mullis, I am just trying to understand some of the timeline.

Mullis: I totally understand that.

Guerrettaz: Just relax, we are all ok here.

Mullis: I think I messed up my name here.

Kaczmarczyk: Can you please state your name for me, sir.

Mullis: James Mullis.

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

Mullis: I do.

Kaczmarczyk: Thank you sir.

Mullis: First off I want to say I am sorry about what I did about the permit. I shouldn't have done that. That was wrong of me but I was dealing with the loss of my son and I just wanted it to go away. So, I hope you understand that.

Guerrettaz: Ok. The driveway that goes back to the pole barn...

Mullis: Right here?

Guerrettaz: Yes, was that constructed at the time the pole barn was put in?

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Mullis: At the same time, yes.

Guerrettaz: So, did you have to build up that slope at the time when you put that in?

Mullis: This was all built up when I built the house.

Guerrettaz: Ok, so you built the house and then it was built up to have a flat area.

Mullis: As I was building the house I took all the dirt that came out of the house and put it here and all of this was a gravel driveway for years. Then in 2016 or whatever it was when I built the garage, basically it was the same way I just added a few loads of stone to make it fall properly. So, what happens is this water comes down and you can almost see where it comes if you look right here. That water comes right here and comes right out that spot up there and I have taken precautions over the years to put concrete slabs and riprap and everything else and that has been that way for going on 15 years now. It has never washed out a bit. There is water goes underneath that deck. Everything slopes from here, here, here and goes out right at that very corner right there.

Guerrettaz: Ok, so it was built up in the area was the deck was and that is not where the natural grade was at one time.

Mullis: No.

Clements: It looks like a nice deck.

Kaczmarczyk: It is a lovely deck.

Guerrettaz: I guess I would agree with what the petitioner's representative said that accessing the back part of the yard is important. Now, I can't necessarily disagree with staff's statement that they can live there and the deck is not necessary for them to live in the house. But the full use of their property is augmented I think by the fact that they can use the back part of the yard without bringing people down the driveway and accessing it from that.

Mullis: I have an elderly mother and she can't when we have barbeques or whatever down at the bottom. If we want to try to go down there she is not able to get down there. I have got grandkids, you know, especially the one that Tripp left behind, it is very important that I definitely don't want him getting hurt.

Clements: Could I just ask one question. I am on the Board of Zoning Appeals but I am not a builder or anything. To me, you know, of course this is steep slope and all of that but the environmental hazard exactly what is it in this case? Because it doesn't have a roof and it does have holes for the water to go through the platforms. What exactly, could you explain this to me staff? I am sorry and thank you.

Wilson: I think I can explain it. We have an Environmental Constraints Overlay.

Clements: Yes.

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Wilson: We have had that since 1997, years before Mr. Mullis bought the property. Regardless of whether or not the lot was created in 1969, the ordinance was in effect when he purchased the property. The idea is to minimize disturbance in steep slope areas. The ordinance is set up that we have certain ability to waive the ordinance but only the case of construction of a primary residence and only the minimum amount to construct the primary residence. We do not the ability to waive the construction of accessory structures going into steep slopes because the ordinance just doesn't allow it. I don't have the discretion to allow it. Anybody who wants to build in the Environmental Constraints Overlay, an accessory structure or a garage and so on, has to get a variance. We just don't have any way right now to get around that. We do have a way to waive the buildable area for addition to an existing residence.

Clements: But this isn't a really a residence, it's like, could I ask one other question because I think just answered it. You have answered it very well. But do any of the ADA, the Americans with Disabilities Acts ramifications matter here? Because he just talked about accessibility of the lot.

Wilson: Mr. Carmin said the log cabin rule, I mean, the cases in the statute on it are somewhat vague. I am not sure exactly whether those hearty pioneers that came to Indiana really were building very many 3-story decks and the idea of the log cabin rule is that the basic idea is you ought to be able to build your own residence within certain confines without having governmental interference. Whether that includes a 3-story deck or not I think is debatable. I think one condition we would want on this if a variance is granted is that a building permit be obtained and that if necessary engineering studies be done for that and that it meet building code. Because if he is concerned about accessibility of people and children playing on that top it needs to be safe. I think that is our primary concern is safety of the deck and so if we do grant a variance we would suggest that it be conditional upon a building permit being obtained and that all requirements from the Building Department be met. Because it looks like it is built on a fill. There is no lateral ports to prevent shifting in the event of wind, a shear wind. Those are some of the concerns. We don't know what kind of footings are on those poles. It needs to be engineered. This is a 3-story deck.

Clements: For their safety, yes.

Wilson: There is a safety issue. The steps especially if they are for elderly individuals, those steps should be designed to meet building code standards, not necessarily ADA standards but building code standards. So, that would be a condition that we would request if the variance is granted.

Clements: That answered a lot of questions that I had.

Guerrettaz: Does our local code have and I am asking because I don't know the answer to the question, does our code have a standard for a stairway on a deck?

Wilson: I believe so. I did let Jim Gerstbauer look at this picture and there were time constraints the packet had already gone out, so I did not get a letter from him. But what he said was just looking at it he would have concerns. He would want to see engineered plans and as for as the footers, particularly the lack of lateral support, given the height of that.

Guerrettaz: And that was the Building Department?

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Wilson: That was the Building Department.

Guerrettaz: Ok.

Wilson: I think that is way just assuring that if we approve the variance that the structure is ultimately safe for the kind of uses he is talking about.

Kaczmarczyk: Alright, anyone else here wish to speak on behalf of the petition? Come on up sir.

SUPPORTERS – 1912-VAR-73 & 1912-VAR-74 – Mullis

Kaczmarczyk: Could you sign in please? Please state your name.

Knudsen: Ulivik Knudsen.

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

Knudsen: Yes.

Kaczmarczyk: Thank you sir.

Knudsen: I have lived in the neighborhood since 1993. It is a great neighborhood. We have Sycamore Land Trust 50 acres. We have Friends of Mount Gilead 50 acres at the end of the road that will never be built. My wife and I really enjoy the view, the back view off of our deck. Many an evening we sit there and talk about our day. I have been on Jimmy and Jennifer's deck. It is beautiful. That is where you would want a deck if you owned that piece of property to make proper use of it. I can see unwinding at the end of the day on that deck. It is almost like you view right into the woods. Even though my lot is only 100 feet wide once you get on the back you get to enjoy all of it. If I owned that home, if I bought that home I would want to be able to use the deck as it is right now. I have been on that deck. That deck is rock solid. He has, I don't know what it's called but those huge rocks at the bottom that keep any dirt from moving down and I moved around on the deck and its very well made. I am sure it could meet all of the standards that it needs to. Jimmy is a very good neighbor. His yard is one of the better looking yards in the neighborhood. Some neighbors don't take as good of care of them as Jimmy and Jennifer do. So, I am here to support the variance for the deck. His son, Trenton, my sister lives right across the street from Jimmy, which is why I moved into the neighborhood. I am also Danish so living on Viking Ridge makes a lot of sense for me. Trenton has done work for my little sister, hard worker. Trenton is his son. We are pretty close in the neighborhood. I know pretty much everybody. I talked to several of them and nobody had any objection to the deck. They had questions for me about what is this all about and I said, well, the deck is on a pretty steep slope so you have to get permission to be able to do that and they said, oh, I hope they give it to him. So, that is all that I have to say. Thank you for your time.

Kaczmarczyk: Any questions?

Clements: I have one request and it is a request in general and I don't know if this will be approved

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or not, I appreciate first off all the support of the neighbors, this matters to me. But in your discussions in your neighborhood it would be most helpful if you could tell these people that if ever they consider making such an improvement on their own home, that they really should enlist the help of the Planning Department because it will save them time and money and help secure their property. That is a favor I have to ask.

Knudsen: Sure, I kind of stick my nose in things going on in the neighborhood. I love walking my dog in the neighborhood. I actually own a piece of property so I am at 6290. I own a piece of property that I bought 15-18 years ago with the idea that someday my son would build on it, my son, Max. But now I find out that there are certain restrictions. So, I paid \$30,000 for a little hundred foot piece of land that I have been paying whatever \$350 a year property taxes, all on time and now I find out that I may not be able to ever build on it.

Clements: Well, these people here are your friends.

Knudsen: Did I ever get a notice of that when I bought it? I didn't see anything in all of the paperwork the realtors did.

Clements: I don't know. Things have changed since you bought it and that happens, actually we are about ready to undergo a reconsideration of our county code and it is very complicated and we do appreciate the public's involvement. Because things like this do impact it.

Knudsen: I don't think I was notified. So, do people who bought before the new rules are in place are they grandfathered in?

Clements: You bought before...

Knudsen: Yeah, I bought the home in 1992 and I bought the lot in maybe 1998 or something like that.

Wilson: Well, slope restrictions were in place at the end of 1997.

Knudsen: At the end of 1997, ok.

Wilson: Typically, people do not look at the zoning ordinance or even the restrictive covenants when they buy a lot and they should.

Knudsen: Usually it says that the owner of the lot, owner of the home know of any reason, anything that the new buyer should know about.

Wilson: And they are going to put down that there are zoning restrictions.

Knudsen: I didn't see anything about.

Wilson: It doesn't matter whether the owner told you or not. It is public record the same way that a subdivision plat is public record and restrictive covenants. You are deemed to be of notice whether or not anybody gave you personal notice or not and we do publicize all of our meetings.

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Any change in the zoning ordinance there is a legal notice put in the paper. We post everything on the website of any change in the ordinance, any zoning map amendment and so on. So, we try our best to inform people. People don't always get informed.

Kaczmarczyk: That is probably something your real estate agent should have informed you about.

Knudsen: Say again?

Kaczmarczyk: That is something your real estate agent should have known and informed you of.

Knudsen: Because if it's not buildable it's not worth \$30,000.

Wilson: One thing is I would advise you to come by the Planning Office and we will go over the lot and what you can do with, what limitations there will be. If it was platted before the slope ordinance went into effect you are entitled to build a home on that site. But you would have to build it in the minimal disturbance to steep slopes.

Knudsen: Sure. I will spread the word. I promise.

Clements: Thank you, sir. That is very helpful.

Kaczmarczyk: Thank you for coming this evening.

Mullis: This is by far not done. I have been in this busy for a long time. This is my deck. I don't want it going anywhere, so you can assure yourself that the only reason those things that you pointed out are not in there is because I had to stop construction on the deck. So, if you notice this up here, this is all wood. That cannot go anywhere. The post up here are just like set every, there will be another beam going here. There will be cross beams. I can promise you it will take a massive earthquake for that deck to come down.

Wilson: All we care about is that you meet building code.

Mullis: Right, right. I understand and as far as the steps go they are 7 and half inch steps. 12 inches tread wise and all of that. As you notice, this one comes down on the deck. Yes, these are kind of free-standing but they will be posted. It will be done right. I will promise you that.

Kaczmarczyk: Thank you sir. Is there anyone else here that would like to speak on behalf of this petition? Seeing none. Is there anybody who would like to speak against this petition? Seeing none.

FURTHER SUPPORTERS – 1912-VAR-73 & 1912-VAR-74 – Mullis: None.

REMONSTRATORS - 1912-VAR-73 & 1912-VAR-74 – Mullis: None

ADDITIONAL QUESTIONS FOR STAFF – 1912-VAR-73 & 1912-VAR-74 – Mullis: None

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FURTHER QUESTIONS FOR STAFF – 1912-VAR-73 & 1912-VAR-74 – Mullis

Clements: Do you want to do the motion?

Guerrettaz: I can do this.

Guerrettaz: **In the matter of case number 1912-VAR-73 and 1912-VAR-74, design standards variance from Chapter 804 and Chapter 823, Buildable Area in the 15 percent slope for Chapter 804 and ECO Area 3, 18 percent slope requirement for Chapter 825, I move approval based on practical difficulties I believe have been met, with the following condition;**

- 1) The petitioner prepare a statement certified by a special engineer to stability and suitability of the deck for intended purpose and that meets the appropriate local building codes.**

Clement: I **second** that motion. That is good.

Kaczmarczyk: Please call the roll, Larry.

Wilson: I just want to clarify. Bernie that would **imply getting a Building Permit** as well?

Guerrettaz: **If Building Permit is necessary, I would include that under the appropriate local building codes** that is why I phrased it that way.

Wilson: The vote is petition 1912-VAR-73 and 1912-VAR-74, Mullis Buildable Area Variance and Mullis ECO Area 3 Variance, respectively. A vote in favor is a vote to approve both variances based on practical difficulties in utilizing the property with the condition that an engineered study be submitted along with a building permit application and that it meet all building code requirement.

Carmin: That is not the stated condition. You changed that.

Guerrettaz: Say that again?

Carmin: That is not your condition.

Guerrettaz: What did you take, can I ask question just so we can get to the bottom of it?

Wilson: Sure.

Guerrettaz: What did you take exception to?

Carmin: I understand Bernie from your condition that complies with all building codes means if a building permit is required it has to be obtained. If it is not required, a building permit itself would be required. The other engineering statement still would apply.

Guerrettaz: Yeah, that was the point of the statement. Let me just read it again and then we will go

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from there, ok, just so we can be clear. The petitioner prepare a statement certified by a professional engineer to the suitable and stability of the deck for its intended purpose and that it meets the appropriate local building codes. That way they can assess what codes need to be addressed and then if there is a question as to whether they do need to be addressed then they deal with staff on that. Because there is a question as to whether or not a building permit is necessary so I am just saying that it needs the local building codes.

Wilson: I think my concern was having some basis for the Building Department staff to review the site and review the construction.

Guerrettaz: That is why I put in there that it be by a professional engineer that takes liability and understands that. That is why, I didn't want to leave it up to the Building Department to make all of the decisions. They have got a statement by a professional engineer that would take all of the liability for such. That is why I phrased it that way.

Wilson: Let me repeat the motion. I will try to anyway. The vote is on petition 1912-VAR-73 and 1912-VAR-74, Mullis Buildable Area Variance and Mullis ECO Area 3 Slope Variance. The motion is to approve based on practical difficulties with the condition that a report be issued by a licensed engineer, is that...

Guerrettaz: **The petitioner prepare a statement certified by a professional engineer to the suitable and stability of deck for its intended purpose and that it meet the appropriate local building codes.**

Wilson: Ok. I will just go ahead and put it in the record **as stated by board member, Bernie Guerrettaz** and we will take it directly from the transcript that way.

Guerrettaz: Yeah, that would work.

Wilson: Again, a vote in favor is a vote to approve the variances with the conditions set forth. Mar Beth Kaczmarczyk?

Kaczmarczyk: Yes.

Wilson: Margaret Clements?

Clements: Yes.

Wilson: Berne Guerrettaz?

Guerrettaz: Yes.

Wilson: The variances are approved with the conditions as set forth.

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The motion in cases 1912-VAR-73, Mullis Buildable Area Variance to Chapter 804, and 1912-VAR-74, Mullis ECO Area 3 Variance to Chapter 825, in favor of approving the variances with the condition as stated by board member Bernie Guerrettaz, carried unanimously (3-0).

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REPORTS:

Planning/Wilson: No report.

Legal/Schilling: No report

The meeting adjourned at 7:08 P.M.

Sign:

Attest:

Mary Beth Kacmarczyk, Chairman

Larry J. Wilson, Secretary

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