

DRAFT

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

CALL TO ORDER

ROLL CALL

INTRODUCTION OF EVIDENCE

APPROVAL OF AGENDA

APPROVAL OF MINUTES

January 8, 2020

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, William Hosea

ABSENT: None

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

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

OATH OF OFFICE – William Hosea

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 January 8, 2020 minutes carried unanimously.

DRAFT

ADMINISTRATIVE BUSINESS: None.

OLD BUSINESS:

- 1. 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.**
*****CONTINUED BY STAFF*****

NEW BUSINESS:

- 1. 1912-VAR-75 Unionville Elementary Digital Sign Variance from Chapter 807**
One (1) 1.03 +/- acre parcel in Benton South Township, Section 9 at 8144 E State Road 45. **Zoned IP.**
- 2. 1912-VAR-76 Fry Front Yard Setback Variance from Chapter 804**
One (1) 1.64 +/- acre parcel in Benton South Township, Section 17 at 6491 E Cox DR. **Zoned SR.**
- 3. 1912-VAR-77 Stumpner Rear Yard Setback from Chapter 833**
One (1) 0.33 +/- acre parcel in Perry Township, Section 14 at 3850 S Snoddy Rd. **Zoned RE1.**
- 4. 2001-VAR-01 Monroe Minimum Lot Width Variance from Chapter 804**
5. 2001-VAR-02 Monroe Buildable Area Variance from Chapter 804
One (1) 11.58 +/- acre parcel in Washington Township, Section 29 at 6130 N Bottom Road. **Zoned AG/RR.**
- 6. 2001-VAR-03 Freitag Minimum Lot Size Variance from Chapter 804**
7. 2001-VAR-04 Freitag Buildable Area Variance from Chapter 804
8. 2001-VAR-05 Freitag ECO Area 3 18% Restriction from Chapter 825
One (1) 1.9 +/- acre parcel in Salt Creek Township, Section 5 at 6440 E Bender Rd. **Zoned FR.**
- 9. 2001-VAR-06 Gray Minimum Lot Width Variance from Chapter 804**
One (1) 2.5 +/- acre parcel in Bean Blossom Township, Section 28 at 7892 N Red Hill Rd. **Zoned AG/RR.**
- 10. 2001-VAR-07 Smith & Kelly Minimum Lot Size Variance from Chapter 804**
One (1) 1.03 +/- acre parcel in Bloomington Township, Section 24 at 4405 N Bramble DR. **Zoned CR / ECO3.**

REPORTS:

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

DRAFT

OLD BUSINESS

1. 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: Petition has been continued by staff.

NEW BUSINESS

DRAFT

1. 1912-VAR-75 Unionville Elementary Digital Sign Variance from Chapter 807

One (1) 1.03 +/- acre parcel in Benton South Township, Section 9 at 8144 E State Road 45. **Zoned IP.**

BOARD ACTION: Wilson introduced the petition.

STAFF ACTION:

Crecelius: Thank you Mary Beth. The petitioner is requesting a design standards variance from Chapter 807-6 (B) (2) of the Monroe County Zoning Ordinance. The variance is requested to allow for a Changeable Copy Sign. The petition site is located in Benton South Township Section 9 at 8144 East State Road 45. The petition site is zoned Institutional/Public as designated in Chapter 833. The site is also located within the Environmental Constraints Overlay Area 3 due to its proximity to the Lake Monroe Watershed. Adjacent properties are zoned Estate Residential, Agricultural/Rural Reserve and Suburban Residential. The petition site currently holds the 50,000 square foot school building constructed in 1962 and a free-standing canopy shelter house constructed in 2016. The property is accessed from 2 driveways off of East State Road 45, a designated major collector. The site has access to water and utilizes a commercial septic system. There are no known karst features or FEMA Floodplain. Slopes greater than 15 percent are present across the site, specifically at the southwest corner of the property as shown on the maps below. The Comprehensive Plan designates the petition site as Rural Residential. So, this is a pictometry image. The site currently has a grandfathered wall sign. It could have a maximum sign area of 60 square feet for a ground sign per the Institutional/Public zoning of Chapter 807. Due to the location and the proximity to State Road 45 right of way, the school has few locations where signs could be placed that would be visible to 45 traffic. In the photo on the screen the red square is the current wall sign. The yellow square is where they are proposing to place the sign. Location is not a factor, necessarily of this variance. Because they have chosen to pursue a sign that is not visible from the road they are eliminating any kind of right of way or visibility or any kind of safe way concerns along 45. The proposed sign location would be visible from the student drop off area at the school main entrance located on the south side of the western parking lot. A changeable copy sign allows for the manual changing of manual or digital change of multiple lines of text. The purpose of the proposed sign is to allow the school the ability to inform students, parents and other community residents about activities and or event changes related to the Unionville Elementary School. Approval of the variance would allow for the Unionville Elementary School to erect a sign containing changeable copy text. The image on the upper left of the screen is an example of something that might be proposed. If the variance is approved they still will follow the permit application process. Staff recommends approval of the design standards variance to the Changeable Copy Restriction of Chapter 807, based on the findings of fact, specifically C, Practical Difficulties. The petitioner, Unionville Elementary School is seeking a way to inform students, parents and residents of current events and changeable copy signs are strictly prohibited and this would be the minimum variance required in order to do so. Does anybody have any questions?

RECOMMENDED MOTION:

Approve the design standard variances to the changeable copy restriction of Chapter 807 of the Monroe County Zoning Ordinance based on the findings of fact, specifically (C), Practical Difficulties (see Findings of Fact):

DRAFT

- The petitioner, Unionville Elementary School, is seeking a way to inform students, parents, and community residents of current events;
- Changeable copy signs are strictly prohibited and this would be the minimum variance required;

FINDINGS OF FACT: Changeable Copy Prohibition

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 for the Unionville Elementary School to erect a sign that contains changeable copy text;
- The variance would waive Chapter 807 design standard 6(B)(2) restricting changeable copy text on signs located within Monroe County jurisdiction;
- The site is 16.25 +/- acres and is split-zoned Institutional (I) and Estate Residential 1 (RE1);
- The site has an approved site plan on file. The addition of gravel parking areas will require a site plan amendment to be filed;
- There is no evidence of karst features or FEMA floodplain;
- The proposed sign location is within Buildable Area (15% slope) and doesn't interfere with ECO Area 3 18% slope restriction;
- 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 E SR 45, a designated Major Collector road;
- The site has access to water and utilizes a commercial septic system;
- The proposed sign location isn't expected to interfere with visibility on E SR 45;
- 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

DRAFT

concert with other approvals - sought or granted, would not result in a development profile (height, bulk, density, and area) associated with a more intense zoning district and, thus, effectively re-zone the property; and,

Findings:

- See findings under A(1) and A(2);
- The comprehensive plan identifies this area as Rural Residential;
- Conclusion: The character of the property included in the variance would **not be altered** in a manner that substantially departs from the characteristics sought to be achieved and maintained within the relevant zoning district.

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

Findings:

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

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

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

Findings:

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

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

Findings:

- See findings under A (1);
- Approval of the variance would allow for the Unionville Elementary School to erect a sign that contains changeable copy text;
- 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;

DRAFT

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

Findings:

- See findings under (A)(1);
- The petitioner, Unionville Elementary School, is seeking a way to inform students, parents, and community residents of current events;
- Changeable copy signs are strictly prohibited and this would be the minimum variance required;
- 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 – 1912VAR-75 – Unionville Elem.

Kaczmarczyk: Any questions?

Guerrettaz: In the staff report on page 29, it says that the petitioners have chosen to pursue that is not visible from the road, therefore they are eliminating any right of way or safety concerns.

Creceilius: Yes.

Guerrettaz: It says not, so I just wanted to confirm that.

Creceilius: Yes, it is.

Kaczmarczyk: Any further questions for staff? Would the petitioner like to speak? You don't have to if you don't want to. Would anybody here like to speak on behalf of the petition? Seeing none. Would anybody like to speak against the petition? Seeing none.

**PETITIONER/PETITIONER'S REPRESENTATIVE –
1912-VAR-75 – Unionville Elem: None**

SUPPORTERS – 1912-VAR-75 – Unionville Elem: None

FURTHER SUPPORTERS – 1912-VAR-75 – Unionville Elem: None

REMONSTRATORS - 1912-VAR-75 – Unionville Elem: None

DRAFT

ADDITIONAL QUESTIONS FOR STAFF – 1912-VAR-75 – Unionville Elem.

Clements: I would like to ask a question of staff, at this point I thought there might be a little more discussion. In the Agricultural/Rural Reserve area with changeable type sign, can you tell me the motivation for prohibiting that in the past?

Creceilius: This petition site is located in the Institutional or Public zoning. Generally changeable copy text on a sign is prohibited throughout the county. Anytime we have that it is either grandfathered or received a variance.

Clements: How would this impact applications for further changeable copy signs in the future to our county?

Creceilius: Variances are supposed to be unique situations and I think the uniqueness of this current petition is that it is a Unionville Elementary School. It is Monroe County School Corporation. Because there is no setback, there is no enough room to have a sign out front. Maybe other opportunities are missed.

Wilson: A variance is really a petition for relief from a certain aspect of the ordinance, based upon the conditions of particular lot or parcel. It is not a general waiver of the ordinance so there is not precedent as far as someone coming in in the future and saying you gave a variance to this school, therefore I should have a variance. Right now the changeable copy prohibition applies throughout the county. It is a part of the Sign Ordinance primarily based upon concern in regard to distraction of driver's visibility, as well as just aesthetics. Those are the major 2 reasons. I am fairly certain this will come up as we update the zoning ordinance whether or not we need to perhaps changes our standards somewhat but yet still avoid visual signs that might cause the distraction.

Creceilius: I am not have made that very clear in the report that location is not necessarily dependent on approval but it was a factor. We know it is not going to be anywhere near the road and actually I received a call today of somebody inquiring about the petition. All they wanted to know was if there was going to be light shining into their house across the road and as soon as they heard that it wouldn't be near it, they were like so happy.

Clements: Will it be on 24 hours a day, the changeable?

Creceilius: I am not sure. It could be manual changeable copy text or it could be digital. Would you like to see the last slide? It is where the number 4 and the red circle is on the upper right screen. That is the location, so it is in that hill on the south side. The green space is actually slopping downward. The structure you can see on the left side of that picture is a garage and there is a church adjacent to the property. So, I don't predict that illumination would be too much of a problem or a hassle for anyone nearby.

Clements: Ok, thank you.

Kaczmarczyk: Ok, we are ready to make a motion.

DRAFT

FURTHER QUESTIONS FOR STAFF – 1912-VAR-75 – Unionville Elem.

Guerrettaz: In the matter of case number 1912-VAR-75, design standards variance Changeable Copy, Section 807-6, (B) (2), based on the staff report and the findings found and the recommended motion by staff, I move that we approve the variance.

Kaczmarczyk: I **second** the motion.

Wilson: The vote is petition 1912-VAR-75, Unionville Elementary School Sign. A Yes vote is a vote in favor of granting the variance to allow a digital sign based upon the findings. Margret Clements?

Clements: Yes.

Wilson: Bernie Guerrettaz?

Guerrettaz: Yes.

Wilson: William Hosea?

Hosea: Yes.

Wilson: Mary Beth Kaczmarczyk?

Kaczmarczyk: Yes.

Wilson: The variance is approved 4 to 0.

The motion in case 1912-VAR-75, Unionville Elementary Digital Sign Variance from Chapter 807, in favor of approving the variance, carried unanimously (4-0).

NEW BUSINESS

DRAFT

2. 1912-VAR-76 Fry Front Yard Setback Variance from Chapter 804

One (1) 1.64 +/- acre parcel in Benton South Township, Section 17 at 6491 E Cox DR. **Zoned SR.**

BOARD ACTION: Kaczmarczyk introduced the petition.

STAFF ACTION:

Myers: Thank you. This is case number 1912-VAR-76, Rodney and Joni Fry Variance. To start off we have some summary and background here of the petition. The petitioner requested the design standards variance from Front Yard Setback requirement of Chapter 804 for the purposes of constructing a 24' by 30' storage pole barn. The proposed pole storage barn will be located approximately 22' inside the 25' setback required front yard setback. The proposed pole barn will be required to meet all other design standards and building codes. The majority of this site exhibits slopes greater than 15 percent. That is part of the reason why they selected to put it here. There were no other suitable locations there were not in steep slopes other than inside the front setback. The front setback is measured from right of way and the proposed storage pole barn will be located very close to the south western property line encroaching approximately 22' into the 25' setback as I have stated before. Some of the background here, they originally came in with an application for a pole constructed accessory building with the Monroe County Building Department and upon the review of the application planning staff determined that the proposed location of the structure would be located in that front yard setback and would require a variance. According to the petitioner the location of the proposed pole storage barn was selected as it is the only suitable area remaining on the property that does not exhibit slopes greater than 15 percent. The petition site is located at 6491 East Cox Drive in Section 17 of Benton Township. The petition site is zoned Suburban Residential along with the adjoining Danny Smith Addition properties and it is also located in Area 3 of the Environmental Constraints Overlay. The majority of the area is Suburban Residential of Conservation Residential and the current use is single family residential use. Some of the site conditions, the site is 1.89 acres and is accessed off of East Cox Drive, a local road. The primary residence utilizes sewer and water. There are not karst features visible on the lot. FEMA Floodplain is not located on the property and as you can see here by the slope map most of the property is within that 15 percent constraint on slopes. The entire property is also in the Area 3 of the Environmental Constraints Overlay which has restriction on land disturbances and vegetation removal on slopes greater than 18 percent. Drainage on this site runs northeast and southwest into a ravine that extends through the middle of the property. You can see that convergence in the middle there. The Comprehensive Plan has it designated as Rural Residential. Now, here we have some site photos. The top left photograph is facing north. It is view of the driveway cut and the east fence line along East Cox Drive and the bottom right photograph is the opposite view looking south of the same fence line and driveway cut. A few more pictures here, looking at the fence line and the existing home as well as the detached garage. The top left photograph is facing north that is a view of the right way and tree line along East Cox Drive and then the bottom right photograph is facing east, a view of the fence line along East Cox Drive. Now we are kind of looking at the area where the proposed structure will go and that is on the south side of the home and the south side of the property. Some more pictures here of that kind of site and then the bottom right photograph you can see that the grade starts to go down pretty quickly into that ravine that was on the slope map. Here are some more photographs, aerial pictometry on the bottom right. Here we have the petitioner's statement and their site plan. These 2 items can be found in your packet. The

DRAFT

site plan to the bottom right shows, I can't really see it on here but there is a proposed location of the pole barn structure and it does reside in the setback area and that is why we are here today. Some more construction items here. Overall, staff recommends approval of the Front Yard Setback requirement to Chapter 804, based on the findings of fact and subject to the Monroe County Highway Departments and Stormwater Engineer Reports. I will now take any questions.

RECOMMENDED MOTION:

Staff recommends **approval** of the front yard setback requirement to Chapter 804 based on the findings of fact and subject to the Monroe County Highway Department and Stormwater Engineer reports.

FINDINGS OF FACT: Front Yard Setback Chapter 804

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

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

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

Findings:

- The site is 1.89 +/- acres and is zoned Suburban Residential (SR);
- The site is accessed off of E Cox DR, a local road;
- The site is located in Area 3 of the Environmental Constraints Overlay;
- There are no visible karst features on the site or FEMA floodplain;
- There are no designated natural or scenic areas nearby;
- Approval of the variance would allow the construction of a 24' x 30' pole storage barn to be located approximately 22' inside the 25' required front yard setback;
- The proposed 720 sq. ft. pole storage barn will be located in an area that exhibits less than 15 percent slope;
- The pole storage barn will meet all other required design standards;
- **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 property is addressed off of E Cox DR, a local road (50');
- The minimum building front yard setback from the ROW is 25';
- The site has access to water and sewer;
- Allowing the pole storage barn to be constructed in its proposed location will have no foreseeable impact on utilities;

DRAFT

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

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

Findings:

- See findings under A(1) and A(2);
- The required front yard setback is determined by the Thoroughfare Plan and is listed on the Danny Smith Addition Subdivision plat;
- The 2018 Thoroughfare Plan designates E Cox DR as a Local Road with 50' of ROW;
- The required front yard setback is measured from ROW;
- The required front yard setback for structures is 25';
- The use of the property is residential;
- The surrounding areas are residential and/or agricultural;
- The Comprehensive Plan designates this area as Rural Residential;
- The pole storage barn will meet all other design standards;
- **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 with the relevant zoning district.

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

Findings:

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

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

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

Findings:

- See findings under A(1), A(2), and A(3);
- The petitioner is applying for a front yard setback variance instead of a buildable area variance due to the cost of the slope reinforcement that would be required if the latter option were pursued;
- **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

DRAFT

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) and A(2);
- Approval of the variance would allow the petitioner to construct a pole storage barn that would encroach approximately 22' into the 25' front yard setback;
- **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);
- There exists no other feasible alternative, within the terms of the ordinance, for the landowner to place a pole storage barn on the property;
- The proposed location within the front yard setback was selected as it is the only area remaining on the property that does not exhibit slopes greater than 15 percent;

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-76 – Fry

DRAFT

Kaczmarczyk: Any questions?

Guerrettaz: I have got a few questions. So, Drew, are they proposing to set it right down here in this corner? It is hard to see on this.

Myers: Yes. If you are looking at this bottom right photograph there is a black square toward the southern corner of the southern parcel. I will say that these lots are combined. They appear as 2 separate lots but they are combined.

Guerrettaz: So, are they proposing to put the structure right up on the right of way or is there a distance that they are going to try to stay off of the right of way?

Myers: We can certainly condition something with that specificity. That site plan that they have it doesn't show exactly how far away from the right of way line or the property line that they plan on putting the structure. That is why in the staff report it is approximately 22' feet in the 25' foot setback, so we can certainly say something about making sure that it is not right up on the line if you feel that is necessary.

Guerrettaz: Is the dark line is that the right of way or is that, that is the right of way, correct? The dark line, the art.

Myers: The drawn on, on the site plan is the structure but the darkened line that goes around those are the property lines. The property line should end up right along where the right of way dedication is.

Clements: So, that is a right of way, the property line is the same thing as the right of way.

Myers: The edge of the dedication, correct.

Clements: Ok.

Myers: I believe in the packet there is a copy of the plat, the subdivision plat and it should have that right of way dedication show. It might be a little small to see.

Clements: That is a little small. We are not really able to see that. Do you know which lot number it is on this?

Myers: Yes, I believe it is Lot 29 and 30.

Kaczmarczyk: Any further questions of staff?

Clements: I don't have any.

DRAFT

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

PETITIONER/PETITIONER'S REPRESENTATIVE – 1912-VAR-76 – Fry: None

SUPPORTERS –1912-VAR-76 – Fry: None

FURTHER SUPPORTERS – 1912-VAR-76 – Fry: None

REMONSTRATORS - 1912-VAR-76 – Fry: None

ADDITIONAL QUESTIONS FOR STAFF – 1912-VAR-76 – Fry: None

FURTHER QUESTIONS FOR STAFF – 1912-VAR-76 – Fry

Clements: Bernie, I am going to get better at this, I promise.

Guerrettaz: **In the matter of case number 1912-VAR-76, design standards variance to Chapter 084, Front Yard Setback at 6491 East Cox Drive, Danny Smith Addition Lots 29 and 30, I move that we approve the variance with the added condition;**

- 1) Building Permit be accompanied by an exhibit prepared by a professional land surveyor illustrating that the structure will not be located onto the county's right of way in the Danny Smith Addition. If it does fall within the 15 percent slope staff will give a recommendation whether it is de minimis or not.**

Clements: I **second** the motion.

Kaczmarczyk: Please call the roll, Larry.

Wilson: The vote is on petition 1912-VAR-76, Fry Front Yard Setback. A vote in favor is a vote to grant the variance, based upon the findings and with the addition condition that an exhibit by prepared by a licensed land surveyor, showing that the proposed building is outside of the county right of way. This would occur at the time of the Building Permit application. Bernie Guerrettaz?

Guerrettaz: Yes.

Wilson: William Hosea?

Hosea: Yes.

Wilson: Mary Beth Kaczmarczyk?

Kaczmarczyk: Yes.

Wilson: Margaret Clements?

DRAFT

Clements: Yes.

Wilson: The variance is granted 4 to 0.

The motion in case 1912-VAR-76, Fry Front Yard Setback Variance from Chapter 804, in favor of approving the variance, with the condition as set forth in the motion, carried unanimously (4-0).

DRAFT

NEW BUSINESS

3. 1912-VAR-77 Stumpner Rear Yard Setback from Chapter 833

One (1) 0.33 +/- acre parcel in Perry Township, Section 14 at 3850 S Snoddy Rd. **Zoned RE1.**

BOARD ACTION: Kaczmarczyk introduced the petition.

STAFF ACTION:

Payne: Good evening. This petition for a Rear Yard Setback from Chapter 833. This is a 1 acre parcel in Perry Township, Section 14. The petitioner is requesting a design standards variance from Chapter 833 for the Rear Yard Setback requirement. The purpose of the request is to build a 16' by 22' addition to include a 3rd bedroom and an additional bathroom and laundry facility. The existing single family dwelling is currently encroaching 18.2' into the rear yard setback and the petition does meet all other design standards and complies with other required setbacks. A little more summary here, the petitioner site is located within the Estate Residential 1 zone, which requires a 50' rear yard setback. The petition site is 0.33 acres, which is smaller than the required 1 acre for the zone, however the provision in Chapter 833 allows for reduced side yard setbacks for lots that were in existence prior to 1997. Since the home is currently encroaching into the rear setback a variance is needed to expand the home. The house was originally built as a 2 bedroom home with only 1 bathroom and no laundry facilities. The existing single family dwelling is located 31.8' from the rear property line, which again is an 18.2' encroachment into the rear yard setback. The proposed addition will be on the southeast side of the home and will comply with all required setbacks. The Rear Setback Variance is being triggered again because the petitioner requests to expand the home which is located currently within the rear yard setback. The site is located at 3850 South Snoddy Road in Section 14 of Perry Township. The petition site is zoned Estate Residential 1. The surrounding properties are zoned Estate Residential and Estate Residential 2.5. The current use of the property is residential and most of the surround uses are also residential. Directly south and adjacent to the property is a religious facility, which is the Mount Calvary Baptist Church. The site has frontage and access on South Snoddy Road which is classified as a minor collector by the Thoroughfare Plan. The rear property line of the site abuts the property line of Mount Calvary Baptist Church, which is the petitioner's neighbor to the south. There are no karst features apparent on the site. FEMA Floodplain is not located on this site. The site does not reside in an Environmental Constraint Overlay and drainage of the site is predominately to the south and west. There are no slope restrictions on the site. The site is designated MUA Suburban Residential in the Monroe County Comprehensive Plan. Here are some site photos. Photo #1, we are looking at the rear of the house. We are looking at the rear of the house where 50' setback is required based on the current zoning. However, it is currently situated only 31.8'. Photo #2 is the side yard, which is actually on the south side of the house and I am trying to indicate here where the proposed addition is going to go. So, it is essentially on the southeast corner of the house. The rear yard is the west side of this property. Photo #3 is just showing that this is a single family dwelling with a detached garage. Photo #4 is showing that the property is accessed off of South Snoddy Road. Again, this is another picture of the southwest corner of the house where the addition is planned. Here is a statement from the petitioner, which is included in your packet and according to the petitioner the addition of a 3rd bedroom with bath and laundry will make the home much more functionally livable. The proposed addition again will be on the southeast side of the home and

DRAFT

will comply with all required setbacks. Staff recommends approval of Rear Yard Setback requirements to Chapter 833, based on the findings of fact. Are there any questions?

RECOMMENDED MOTION

Staff recommends **approval** of rear yard setback requirements to Chapter 833 based on the findings of fact.

FINDINGS OF FACT: Rear Yard Setback Chapter 833

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

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

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

Findings:

- Approval of the variance would allow the addition to be built;
- The addition is 16' x 28';
- There are no designated natural or scenic areas nearby;
- The petitioner's site is predominately flat with the majority of the property without steep slopes over 15 percent;
- **Conclusion:** Approval of the variance would not impair the stability of a natural or scenic area.

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

Findings:

- See Findings A(1);
- S Snoddy Rd is a minor collector that runs along the eastern property line;
- The existing single family dwelling is located 31.8' from the rear property line, an encroachment of 18.2' into the rear yard setback;
- The proposed addition will not increase the rear yard setback encroachment;
- The proposed addition will not have an impact on utilities;
- The site utilizes sewer;
- **Conclusion:** Approval of the variance would not interfere with or make more dangerous, difficult, or costly, the use, installation, or maintenance of existing or planned transportation and utility facilities.

(3) The character of the property included in the variance would not be altered in a manner that substantially departs from the characteristics sought to be achieved and maintained within the relevant zoning district. That is, the approval, singularly or in concert with other approvals - sought or granted, would not result in a development

profile (height, bulk, density, and area) associated with a more intense zoning district and, thus, effectively re-zone the property; and,

Findings:

- See Findings A(1) and A(2);
- The property is zoned Estate Residential 1 (RE1);
- The rear yard setback in the RE1 zoning district is 50’;
- The use is residential with surrounding areas being residential;
- The Comprehensive Plan designates this area as suburban residential;
- This is a pre-existing lot that has not changed dimensions since before the current zoning ordinance;
- **Conclusion:** Approval of the variance would not alter the character of the property in a manner that substantially departs from the characteristics sought to be achieved and maintained with the relevant zoning district.

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

Findings:

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

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

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

Findings:

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

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

Findings:

- See Findings A(1) and A(3);
- The lot drains predominately to the south;
- The proposed addition would not interfered with any easements or utilities;
- **Conclusion:** There are no foreseeable detrimental conditions to the use and enjoyment of other properties that would result from the proposed expansion.

DRAFT

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

Findings:

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

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

Findings:

- Practical difficulties have been demonstrated in that the existing single family residence was built prior to the current Monroe County Zoning setback standards;
- **Conclusion:** Petitioner has applied for a rear yard setback variance, which is the minimum necessary in order to further develop the lot in any way.

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

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

QUESTIONS FOR STAFF – 1912-VAR-77 - Stumpner

Clements: I have none.

Kaczmarczyk: No questions for staff. Would the petitioner like to speak?

PETITIONER/PETITIONER’S REPRESENTATIVE – 1912-VAR-77 - Stumpner

Petitioner: (Inaudible)

Kaczmarczyk: Ok, you don’t have to. Sir, if you wish to speak you are going to have to step to the podium and sign in and be sworn in.

Stumpner: I am Richard Stumpner and I am the property owner.

Kaczmarczyk: Could you sign in there?

Stumpner: I will.

DRAFT

Kaczmarczyk: Could you raise your right hand, please?

Stumpner: I will.

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

Stumpner: I do.

Kaczmarczyk: Thank you, sir.

Stumpner: So, all I wanted to add is one of the findings in here in the packet is that the existing single family residence was built prior to the current Monroe County Zoning Setback Standards. So, the 50' setback did not exist when it was built. For what it's worth.

Kaczmarczyk: Ok, thank you. Anyone else wish to speak on behalf of the petition? Seeing none. Anyone wish to speak against the petition? Seeing none. I call for a motion.

SUPPORTERS – 1912-VAR-77 – Stumpner: None

FURTHER SUPPORTERS – 1912-VAR-77 – Stumpner: None

REMONSTRATORS - 1912-VAR-77 – Stumpner: None

ADDITIONAL QUESTIONS FOR STAFF – 1912-VAR-77 – Stumpner: None

FURTHER QUESTIONS FOR STAFF – 1912-VAR-77 – Stumpner

Clements: **In the matter of case number 1912-VAR-77, I recommend approval of the Rear Yard Setback requirements to Chapter 833, based on the findings of fact.**

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

Wilson: Just to clarify, the reason we have a variance in this case is because the addition actually doesn't further increase the nonconformity but the house itself is nonconforming so when you add onto it, you need to get a variance in order to increase the size of a nonconforming structure. So, that is what this variance is for.

Clements: We need to get it into conformity.

Wilson: Again, a yes vote is a vote to approve the variance on 1912-VAR-77, Stumpner Rear Yard Setback. William Hosea?

Hosea: Yes.

Wilson: Mary Beth Kaczmarczyk?

DRAFT

Kaczmarczyk: Yes.

Wilson: Margaret Clements?

Clements: Yes.

Wilson: Bernie Guerrettaz?

Guerrettaz: Yes.

Wilson: Variance 1912-VAR-77 is approved based upon the findings.

The motion in cases 1912-VAR-77, Stumpner Rear Yard Setback from Chapter 833, favor of approving the variance, carried unanimously (4-0).

DRAFT

NEW BUSINESS

4. 2001-VAR-01 Monroe Minimum Lot Width Variance from Chapter 804

5. 2001-VAR-02 Monroe Buildable Area Variance from Chapter 804

One (1) 11.58 +/- acre parcel in Washington Township, Section 29 at 6130 N Bottom Road. **Zoned AG/RR.**

BOARD ACTION: Kaczmarczyk introduced the petition.

STAFF ACTION:

Behrman: This site is located at 6130 North Bottom Road. That is in Washington Township, Section 29. It is currently, well, let's see, the Comprehensive Plan has it as Farm and Forest and the zoning is Agricultural/Rural Reserve. While we are here on the zoning page, I will have you take a look at the shape of this lot. We are basically calling this a "flag" lot. The pole, which is the narrow portion that abuts the road is 150' in width at that point and the Agricultural/Rural Reserve zone requires 200' lot width. This is a conforming lot in that there is farther to the east on this lot in the flag portion that is more than 200' feet. However, you will see in the site conditions plan that there is some steep, bluff like slopes and also that area tends to flood. We are really pretty close to the FEMA Floodplain. This is North Bottom Road and as you know Bottom Road is in the bottom lands and does tend to flood in places. This is just at the cusp of that area. We are here to ask for a Minimum Lot Width Variance and also a Buildable Area Variance to allow for that development to occur in the pole of a flag lot. There are the site conditions and you can see in red that those are the slopes that are greater than 15 percent. In some cases they are extremely steep. This is kind of zoomed in more on the pole part of the lot. There is an existing home from 2005 that was built here. It is nonconforming and so should these variances be approved we would also be bringing this house up into conformity and the other sheds that are on the lot as well. There are a couple of the site visit photos. The upper photo is the petitioner's home. The bottom is also the home and there is a black truck in the photo and that is roughly where they are proposing to put a pole barn that is 30' by 40' and that would be where they will park and do some residential storage. The garage that is currently attached to the home they are converting it to a bedroom and a bathroom to allow for another family member to live with them. The upper picture is the front yard and this is where the septic system is located. There were a lot of flags out on site when I was there and they are in negotiations right now with Monroe County Highway to obtain right of way and part of that drainage ditch. They are going to be doing some road improvements as depicted in Exhibit 3. They actually looked really carefully at where the septic system was during that to make sure they didn't take in any of the septic system, so we know pretty well where that is located and it is not going to be part of that project. This is an aerial view of this site and I will say that we had a neighbor to the south, he called in curious about the drainage impacts and making sure that it was up and out of any flooding areas, which we have confirmed. The neighbor to the north I just heard from today. We had a phone conversation and the result was he sent in a letter, which you should have received at the beginning of the meeting with the title Monroe on the top there. He had a bit of remonstrance that he wanted to air and make you aware of some of the situations out there. The petitioner's letter is in the packet as well as their site plan and I will say that the on the site plan the petitioner did a nice job of including that proposed right of way taking and showing that he is meeting the front setback from that right of way that is currently being proposed. His new structure would meet all of other buildable area standards except for the minimum lot width and building in the pole of a flag lot. I don't think this is my slide, sorry. Finally, Exhibit 3 this

DRAFT

was just something that I grabbed out of the Highway Department that does depict the petitioner's driveway in yellow, the pink will be the right of way and then there is the blue ditching that goes through there, just giving you a whole picture. Something that changed from the staff packet is on this slide. Staff recommends approval of both Minimum Lot Width and the Buildable Area requirements to Chapter 804, based on the findings of fact, with the following conditions; we have added a condition after conversations we have had with neighbors.

1) Submit a Building Permit application for an existing accessory structure that is on site. We don't think it has a permit. We just want to make sure that it clearly does have one going forward in the future and it meets setbacks requirements and if it doesn't then they need to relocate that off the property line appropriately. By approving these variances that would allow for the house to be conforming, the proposed garage and then this accessory structure all be conforming. Any questions?

RECOMMENDED MOTION:

Staff recommends **approval** of both the minimum lot width and buildable area requirements to Chapter 804 based on the findings of fact with the following condition;

- 1) Submit a Building Permit application for the existing accessory structure.

FINDINGS OF FACT: Minimum Lot Width from Chapter 804

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

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

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

Findings:

- Approval of the variance would allow a 30'x40' pole barn to be built on the property in a portion of the lot that is less than the minimum lot width of 200';
- The lot width at the building line is 150' per the deed description;
- There are no designated natural or scenic areas nearby;
- The petitioner's site is not located in the Environmental Constraints Overlay area;
- **Conclusion:** Approval of the variance would not impair the stability of a natural or scenic area.

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

Findings:

- See Findings A(1);
- N Bottom Road is a major collector road that runs along the western property line;
- The pole barn will be meet the 35' front setback from the proposed right of way currently being purchased by the County for road improvements;

DRAFT

- Adding a pole barn will have no foreseeable impact on utilities;
- The site utilizes a septic system that is located just outside of the proposed right of way;
- **Conclusion:** Approval of the variance would not interfere with or make more dangerous, difficult, or costly, the use, installation, or maintenance of existing or planned transportation and utility facilities.

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

Findings:

- See Findings A(1) and A(2);
- The property is zoned Agriculture Rural Reserve (AG/RR);
- The required minimum lot width is 200’;
- The lot width measures approximately 150’ at building line;
- The property widens to greater than 200’ towards the east but is subject to flooding or has bluff-like slopes;
- The use is residential with surrounding areas being residential and agricultural;
- The Comprehensive Plan designates this area as Farm and Forest;
- This is a preexisting lot that has not changed dimensions since before the current zoning ordinance;
- **Conclusion:** Approval of the variance would not alter the character of the property in a manner that substantially departs from the characteristics sought to be achieved and maintained with the relevant zoning district.

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

Findings:

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

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

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

Findings:

- See Findings A(1, 2 &3);
- The purpose of the minimum lot width is to preserve the general character of zoning district;

DRAFT

- The home built in 2005 was located in a non-conforming location with regards to width but the location brought the house out of flood range;
- **Conclusion:** Approval of the variance would not significantly impact the purposes of the design.

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

Findings:

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

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

Findings:

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

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

Findings:

- Practical difficulties have been demonstrated in that the lot exists in the current configuration resulting from a 2000 minor subdivision, which does meet the minimum lot width for the zoning district (AG/RR) but practically does not have reasonable buildable area due to flooding and steep slopes;
- The home (ca. 2005) was located in an area of the lot that did not meet the required the minimum lot width of 200 feet at building line but was a high enough elevation to prevent flooding to the structure;
- The configuration of the lot is such that the portion of the lot with a reasonable building site does not meet minimum lot width, the flag portion has flooding a steep slope constraints;

FINDINGS OF FACT: Buildable (Flag Pole) from Chapter 804

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

DRAFT

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

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

Findings:

- Approval of the variance would allow a 30'x40' pole barn to be built on the property in a portion of the lot that is considered the pole of a flag lot;
- The lot width at the building line is 150' per the deed description;
- There are no designated natural or scenic areas nearby;
- The petitioner's site is not located in the Environmental Constraints Overlay area;
- **Conclusion:** Approval of the variance would not impair the stability of a natural or scenic area.

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

Findings:

- See Findings A(1);
- N Bottom Road is a major collector road that runs along the western property line;
- The pole barn will meet the 35' front setback from the proposed right of way currently being purchased by the County for road improvements;
- Adding a pole barn will have no foreseeable impact on utilities;
- The site utilizes a septic system that is located just outside of the proposed right of way;
- **Conclusion:** Approval of the variance would not interfere with or make more dangerous, difficult, or costly, the use, installation, or maintenance of existing or planned transportation and utility facilities.

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

Findings:

- See Findings A(1) and A(2);
- The property is zoned Agriculture Rural Reserve (AG/RR);
- The required minimum lot width is 200';
- The lot width measures approximately 150' at building line and is considered by definition a pole of a flag lot;
- A the pole of a flag lot is not considered buildable area under Chapter 804-4(E);
- The property widens to greater than 200' towards the east but is subject to flooding or has bluff-like slopes;

DRAFT

- The use is residential with surrounding areas being residential and agricultural;
- The Comprehensive Plan designates this area as Farm and Forest;
- This is a preexisting lot that has not changed dimensions since before the current zoning ordinance;
- **Conclusion:** Approval of the variance would not alter the character of the property in a manner that substantially departs from the characteristics sought to be achieved and maintained with the relevant zoning district.

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

Findings:

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

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

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

Findings:

- See Findings A(1, 2 &3);
- The purpose of the minimum lot width is to preserve the general character of zoning district;
- The home built in 2005 was located in a non-conforming location with regards to width / pole but the location brought the house out of flooding range;
- **Conclusion:** Approval of the variance would not significantly impact the purposes of the design.

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

Findings:

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

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

DRAFT

Findings:

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

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

Findings:

- Practical difficulties have been demonstrated in that the lot exists in the current configuration resulting from a 2000 minor subdivision, which does meet the minimum lot width for the zoning district (AG/RR) but practically does not have reasonable buildable area due to flooding and steep slopes;
- The home (ca. 2005) was located in an area of the lot that did not meet the required the minimum lot width of 200 feet at building line but was a high enough elevation to prevent flooding to the structure;
- The configuration of the lot is such that the pole barn would need to be located in the pole of the flag lot no matter the design or location.

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

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

QUESTIONS FOR STAFF – 2001-VAR-01 & 2001-VAR-02 - Monroe

Kaczmarczyk: No questions for staff? Ok, would the petitioner like to speak?

**PETITIONER/PETITIONER'S REPRESENTATIVE –
2001-VAR-01 & 2001-VAR-02 – Monroe**

Kaczmarczyk: Sign in please. Raise your hand and state your name.

Monroe: Nathan Monroe.

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

Monroe: I do.

DRAFT

Kaczmarczyk: Thank you sir.

Monroe: The letter that I guess was received was news to me today. Is there a chance that I can know what is in the letter?

Clements: I will read it.

Behrman: Or you can just let him, either way.

Clements: Well, I mean it is the matter of record and you should know.

This person is screwing up the drainage for about a 500 acre watershed. I've called the EPA and the state vets office as they distribute their butchering off all's on is not let their dogs carry them all over the neighborhood. They are letting manure lace water into a watershed also. They are at the point where all neighbors want them to move. She thinks rules only apply to everyone else, not them. They will trick some neighed dogs to them then shoot or call animal control. They just don't understand or want to know what being a neighbor is in the country. I would appreciate voting against this petition.

Monroe: So there has been some history with the neighbors. In the past my wife was called as a, what was the word, a witness for the county against their family and since then it has been we have been hated. So thank you for letting me know what is in the letter. None of it, I don't see how it is relevant to any of this.

Kaczmarczyk: None of it is relevant.

Clements: Well, I would just like to know. Are you butchering on the property?

Monroe: We have, we raise American Guinea Hogs for family consumption and they did call the State Board of Animal Health on us that we were running an illegal butcher shop. We met with the gentleman from Indianapolis. We do not run an illegal butcher shop. We raise animals for ourselves. It is an illegal butcher shop if you raise animals to sell to other people. We don't sell food we raise our own food. They did not like that.

Clements: That is a permitted activity. Correct, Tammy, staff?

Behrman: Yes, accessory livestock is permitted and if it is for consumption for your family only.

Monroe: The gentleman came and he said he was 100 percent within our legal rights to do our business as we did and it is not an issue.

Clements: Just to ask about all of the issues in the letter. Are you attracting neighborhood animals to your property in order to?

Monroe: We also raise chickens and some of the issues that have happened is the neighbor dogs would come and eat up our chickens and it is illegal for the dogs to roam. We have our chickens and we have created fencing to keep them in the back of the property. The dogs don't listen to all of that fencing and they go around all of it and that's where the big problem with the feud if you

DRAFT

will, between our families has happened. They viewed us as bating their dogs with chickens somehow. Chickens are chickens, they run around and do their thing and their dogs came and ate our chickens. We called animal control trying to get, we didn't initially call animal control, and we tried to work with the dog owners. Please keep your dog at home. This is not the right thing to do about 4 times in over 40 chicken in, we stand, ok well if you don't want to work it we will work through the law and that is kind of how we got down this road.

Clements: Is there anything that you could do to improve the situation with your neighbor?

Monroe: We have really tried to improve the situation with our neighbor. Their tree fell on our barn. We could have went after them but we didn't. We fixed the barn. It has been silent. We haven't had any issues in about 2 years, to my knowledge that we have had any issues with. We built the whole way between them and us a fence all the way down to mitigate the animal's interaction. So, their dogs would stay away from our chickens, our chickens stay away from view.

Clements: This isn't really what is on the table today, I am just asking because a letter was submitted and I just want to honor the letter and the public input. But that is not the subject of the case and I have no further questions for Mr. Monroe, does anyone else?

Guerrettaz: Just to clarify, there is no use issue with the property, is that correct?

Behrman: Correct. When I was there I saw just about a dozen chickens, guinea fowl and duck combo near a fence.

Monroe: There has been more than 20 instances where they have called animal control on us and we have never received any tickets. We have received citations. They come out and just say, hey been here because we have received a complaint.

Guerrettaz: I just wanted to redirect it back to the land use.

Monroe: I am sorry.

Clements: Thank you.

Kaczmarczyk: Thank you. Anyone here that would like to speak on behalf of the petition? Seeing none. Would anyone here like to speak against the petition? Seeing none. I will call for a motion.

SUPPORTERS – 2001-VAR-01 & 2001-VAR-02 – Monroe: None

FURTHER SUPPORTERS – 2001-VAR-01 & 2001-VAR-02 – Monroe: None

REMONSTRATORS - 2001-VAR-01 & 2001-VAR-02 – Monroe: None

ADDITIONAL QUESTIONS FOR STAFF – 2001-VAR-01 & 2001-VAR-02 – Monroe: None

DRAFT

FURTHER QUESTIONS FOR STAFF – 2001-VAR-01 & 2001-VAR-02 - Monroe

Clements: **In the matter of case number 2001-VAR-01 and 2001-VAR-02, I recommend that we approve both the Minimum Lot Width and the Buildable Area requirements to Chapter 804, based on the findings and subject to the;**

- 1) Submission of the Building Permit application for the existing accessory structure.**

Kaczmarczyk: I **second** that motion.

Wilson: The votes are on both petition number 2001-VAR-01, the Monroe Minimum Lot Width Variance and 2001-VAR-02, Monroe Buildable Area Variance, subject to the condition of approval that a Building Permit application be submitted for the existing accessory structure. Again, a vote in favor is a vote to grant both variance. Mary Beth Kaczmarczyk?

Kaczmarczyk: Yes.

Wilson: Margaret Clements?

Clements: Yes.

Wilson: Bernie Guerrettaz?

Guerrettaz: Yes.

Wilson: William Hosea?

Hosea: Yes.

Wilson: The variances are approved 4 to 0.

The motion in cases 2001-VAR-01, Monroe Minimum Lot Width Variance from Chapter 804 and 2001-VAR-02, Monroe Buildable Area Variance from Chapter 804, in favor of approving both of the variances with the condition of approval, as stated in the motion, carried unanimously (4-0).

DRAFT

NEW BUSINESS

- 6. 2001-VAR-03** **Freitag Minimum Lot Size Variance from Chapter 804**
- 7. 2001-VAR-04** **Freitag Buildable Area Variance from Chapter 804**
- 8. 2001-VAR-05** **Freitag ECO Area 3 18% Restriction from Chapter 825**
One (1) 1.9 +/- acre parcel in Salt Creek Township, Section 5 at 6440 E
Bender Rd. **Zoned FR.**

BOARD ACTION: Kaczmarczyk introduced the petition.

STAFF ACTION:

Crecelius: Thank you. The petitioner is requesting 3 design standards in order to further develop a 1.9 acre lot with a 24' by 24' detached garage that has an attached uncovered, elevated porch that is 8' by 24'. This is located within unbuildable area, slopes greater than 15 percent and slopes greater than 18 percent, because they are also located in the ECO Overlay. The lot size is also under the minimum for the zone. The petition site, lot and structures are pre-existing nonconforming, rendering them grandfathered until change is requested. The Minimum Lot Size variance is the minimum variance required to further develop the lot. The second design standard variance is from the 15 percent from the Buildable Area from Chapter 804 and the third design standards variance is from Chapter 825 of the ECO Area 3, 18 percent slope restrictions. The petition site is located in Salt Creek Township at 6440 East Bender Road and is unplatted. The petition site and adjacent properties are used residentially. They are zoned Forest Reserve and also Environmental Constraints Overlay Area 3. The Comprehensive Plan identifies this area as Rural Residential. The site contains a 1,700' square foot home built in 1960 and a 320' car shed built in 1978, per the property report card. The petition site has access to water and utilizes a septic system. It is accessed off of East Bender Road a designated local road. Drainage from the existing structures run toward the west and or east to existing large ravines. Because it is located within the ECO Area 3 and it consists of slopes mainly over 15 percent it makes further development difficult. The proposed location of the carport is located partially within unbuildable area, 15 percent and ECO Area 3, 18 percent. It is zoned Forest Reserve which has a minimum lot size requirement of 5 acres. Within a square mile of the petitioner there are 7 other parcels that do not meet the Forest Reserve minimum lot requirement. This is a pictometry image of the petition site, the home built in 1960, the car shed is really not visible. This is an image from after you pull into their driveway directly in front of you, you would be looking at the entrance of the proposed carport. The pictometry image does show a large evergreen in that location over where the carport would be proposed but the petitioner states that tree was removed years ago due to deterioration. This is just a closer view. Pretty much where that undergrowth, where the shrubs are would be the location of the carport. This is the car shed. The petitioners do say that the car shed was originally built in the 1920's. It is not particularly unusual for a property report card to have an error with the date of building. The petitioners have explored other locations and possibly expanding this existing car shed but found that its structural condition and location would not be physically or financially a viable option. As you can see, the car shed is already located over slope. It has wooden floor and a fairly old foundation. On the image to the left on the screen is a not to scale or not to perspective yellow square which is just roughly where the proposed carport would be. On the right is the submitted site plan. These are the drawings of the proposed car port. The petitioners have informed me that they have altered the design in the meantime and I believe they can discuss that with you. The recommended motion is to approve all 3 design standard variances; Minimum Lot Size

DRAFT

Variance, Buildable Area Variance, both to Chapter 804 and ECO Area 3 restriction of Chapter 825, based on the findings of fact with the following condition;

- 1) Submit a site plan showing detailed property setbacks, septic location and the location and erosion prevention and control measures.

We found that it seems to be a really appropriate area if they would like to further develop the lot but we do want to make sure that erosion control and prevention has been put into place and we would like to see a more detailed site plan. Does anybody have questions?

RECOMMENDED MOTION:

Approve the design standard variances from the Minimum Lot Size and Buildable Area requirements of Chapter 804 of the Monroe County Zoning Ordinance based on the findings of fact and the following condition:

1. Submit a site plan showing detailed property setbacks, septic location, and the location and erosion prevention and control measures (Stormwater Pollution Prevention Plan).

Approve the design standard variance from the ECO Area 3 18% Slope restriction of Chapter 825 of the Monroe County Zoning Ordinance based on the findings of fact and subject to approval of the Building Department.

FINDINGS OF FACT: Minimum Lot Size Standard

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

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

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

Findings:

- Approval of the variance would allow the petitioner to further develop a 1.9+/-acre lot with a 24'x24' detached car port that has an attached 8'x24' uncovered, elevated porch;
- The site has a 1,726 sf home built in 1960 and a 320 sf pole car shed built in 1978 per property report card;
- There are no designated scenic areas adjacent to the petition site;
- There is no evidence that the carport addition would obstruct a natural or scenic view;
- Conclusion: It would not impair the stability of a natural or scenic area.

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

Findings:

- See findings under A (1);
- The property has access from E Bender Road, a designated local road;
- The proposed construction will not interfere with water lines or septic;
- Conclusion: It would not interfere with or make more dangerous, difficult, or costly, the use, installation, or maintenance of existing or planned transportation and utility facilities.

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

Findings:

- See findings under A(1) and A(2);
- The proposal would meet all other design standards except Buildable Area;
- 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);
- The petition site and adjacent properties are zoned Forest Reserve (FR) with a minimum lot size requirement of 5.0,
- The petition site and adjacent properties are a residential use;
- There are seven parcels in a square mile that do not meet the FR minimum lot size requirement;
- Conclusion: The specific purposes of the design standard sought to be varied **would be satisfied**.

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

Findings:

- See findings under A (1);
- There is no FEMA floodplain on site;
- Drainage from the existing structures run towards the west and/or east to existing large ravines. Drainage from the proposed carport is not expected to interfere with this pattern;

DRAFT

- Pictometry images show a large evergreen tree in the proposed carport location which the petitioner states was removed in the past;
- Conclusion: It **would not** promote conditions (on-site or off-site) detrimental to the use and enjoyment of other properties in the area.

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

Findings:

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

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

Findings:

- The strict application of the ordinance would not allow any further development on the parcel without a minimum lot size variance;
- If the variance is not granted, no existing structures could be expanded, or new structures added;
- Petitioner has applied for three variances, which is the minimum necessary to add an additional structure to 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.

FINDINGS OF FACT: Buildable Area Standard from Chapter 804

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

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

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

Findings:

DRAFT

- Approval of the variance would allow the petitioner to further develop a 1.9+/-acre lot with a 24'x24' detached car port that has an attached 8'x24' uncovered, elevated porch;
- The site has a 1,726 sf home built in 1960 and a 320 sf pole car shed built in 1978 per property report card;
- The lot and surrounding area is zoned Forest Reserve (FR) with a minimum lot size requirement of 5.0 acres;
- There are no designated scenic areas adjacent to the petition site;
- There is no evidence that the carport addition would obstruct a natural or scenic view;
- Conclusion: It would **not impair** the stability of a natural or scenic area.

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

Findings:

- See findings under A (1);
- The property has access from E Bender Road, a designated local road;
- The proposed construction will not interfere with water lines or the septic system;
- Conclusion: It would **not interfere** with or make more dangerous, difficult, or costly, the use, installation, or maintenance of existing or planned transportation and utility facilities.

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

Findings:

- See findings under A(1) and A(2);
- The proposal would meet all other Chapter 804 design standards except Minimum Lot Size;
- 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 petition site and adjacent properties are a residential use;
- Conclusion: The specific purposes of the design standard sought to be varied **would be satisfied**;

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

Findings:

- See Findings under Section A and B(1);
- There is no FEMA floodplain on site;
- Drainage from the existing structures run towards the west and/or east to existing large ravines. Drainage from the proposed carport is not expected to interfere with this pattern;
- Pictometry images show a large evergreen tree in the proposed carport location which the petitioner states was removed in the past;
- The petitioner states that the proposed location of the carport is located on “previously disturbed and un-compacted soil fill” and that the this location would “stabilize the existing conditions”, preventing “further erosion” (see Exhibit 1);
- The elevated porch attached to the proposed carport may negatively affect soil-stabilizing vegetation by blocking sunlight;
- Conclusion: It **would not** promote conditions detrimental to the use and enjoyment of other properties;

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

Findings:

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

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

Findings:

- The petition site is located within the ECO Area 3 and consists of mainly slopes over 15%, making further development difficult;
- The proposed location of the carport is located partially within non-buildable area (15%) and (18%);
- Further expansion of the existing car shed would be difficult due to its structural

DRAFT

condition;

- Petitioner has applied for three variances, which is the minimum necessary to add an additional structure to 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.

FINDINGS OF FACT: Environmental Constraints Overlay Area 3 (ECO 3)(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 further develop a 1.9+/-acre lot with a 24'x24' detached car port that has an attached 8'x24' uncovered, elevated porch;
- The site has a 1,726 sf home built in 1960 and a 320 sf pole car shed built in 1978 per property report card;
- There are no designated scenic areas adjacent to the petition site;
- There is no evidence that the carport addition would obstruct a natural or scenic view;
- The proposed carport is partially located within the non-buildable area (15%) and ECO Area 3 (18%);
- Conclusion: It would **not impair** the stability of a natural or scenic area.

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

Findings:

- See findings under A (1);
- The property has access from E Bender Road, a designated local road;
- The proposed construction will not interfere with water lines or the septic system;
- 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);
- 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 petition site was developed before the Environmental Constraints Overlay 3 (18%) requirements;
- 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 from the existing structures run towards the west and/or east to existing large ravines. Drainage from the proposed carport is not expected to interfere with this pattern;
- Pictometry images show a large evergreen tree in the proposed carport location which the petitioner states was removed in the past;

DRAFT

- The petitioner states that the proposed location of the carport is located on “previously disturbed and un-compacted soil fill” and that the this location would “stabilize the existing conditions”, preventing “further erosion” (see Exhibit 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:

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

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

Findings:

- The petition site is located within the ECO Area 3 and consists of mainly slopes over 15%, making further development difficult;
- The proposed carport location is located partially within non-buildable area (15%) and ECO Area 3 (18%);
- Further expansion of the existing car shed based would be difficult due to its structural condition;
- Petitioner has applied for three variances, which is the minimum necessary to add the carport as designed in the application;
- 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 – 2001-VAR-03, 2001-VAR-04 & 2001-VAR-05 - Freitag

Clements: I have none.

Kaczmarczyk: No questions for staff. Would the petitioner like to speak?

DRAFT

**PETITIONER/PETITIONER'S REPRESENTATIVE –
2001-VAR-03, 2001-VAR-04 & 2001-VAR-05 – Freitag**

Kaczmarczyk: Please state your name sir.

Freitag: Christian Freitag.

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

Freitag: Yes.

Kaczmarczyk: Thank you, sir.

Freitag: Thank you. I only wish to speak to the site plan change that was mentioned by Anne. The one point in the findings of fact that she made in your materials on page 117, I believe it was the only point in the findings of fact that raised a question or a concern and specifically it states that the elevated porch, which is what we had planned to build or hope to build, I should say, on the pack of the proposed carport. The elevated porch attached to the carport may negatively affect soil stabilizing vegetation by blocking sunlight. We have removed that from the plan. We don't have any intention of building and in fact we decided not to do it because we couldn't afford it, not because of this. But that has been taken out of the plan.

Kaczmarczyk: Ok, so there is not going to be a deck on that back.

Freitag: That is correct.

Kaczmarczyk: Well, you answered my question before I asked it.

Freitag: Thank you.

Creceilius: If I could make a note. With that statement, if we move forward and approve the plans, I would need to receive, since I am holding your Building Permit, I would need to see the plans updated without the porch.

Freitag: Ok. We have our builders here with us tonight and I am sure they are taking note of that.

Creceilius: Just so you are aware, with the variance if it was approved with the porch it would be for that size or smaller. If you say there is no porch in the setting I would imagine we would expect to see updated plans.

Freitag: Ok, but that would not require a new variance?

Creceilius: No.

Freitag: Ok, that makes sense.

DRAFT

Crece Luis: Thank you.

Freitag: Thank you.

Kaczmarczyk: Thank you sir. Is there anyone else here would like to speak on behalf of this petition? Come on up, sir.

SUPPORTERS – 2001-VAR-03, 2001-VAR-04 & 2001-VAR-05 – Freitag

Kaczmarczyk: Sign in for us. State your name and raise your right hand.

Wood: Loren Wood.

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

Wood: I sure do.

Kaczmarczyk: Thank you, sir.

Wood: I just wanted to make one point about the steep slope that is described on there where the carport is being built. That area is artificial slope. It is just uncompacted fill. It is hard to see from the pictures that were shown but the original slope that runs through there was much gentler. So, where we are building we will actually be stabilizing an area that is really just a mound of dirt and you can see that on the lidar images where the steep slopes happen. But I just wanted to point out that if it were in its original condition the slope would have been much less and at the end of the day we will of course submit plans with the erosion control measures but we will be stabilizing what is currently a problem.

Kaczmarczyk: Thank you, sir. Anyone else wish to speak on behalf of the petition? Seeing none. Anyone wish to speak against the petition? Seeing none. I will call for a motion.

FURTHER SUPPORTERS – 2001-VAR-03, 2001-VAR-04 & 2001-VAR-05 – Freitag: None

REMONSTRATORS - 2001-VAR-03, 2001-VAR-04 & 2001-VAR-05 – Freitag: None

**ADDITIONAL QUESTIONS FOR STAFF –
2001-VAR-03, 2001-VAR-04 & 2001-VAR-05 – Freitag: None**

**FURTHER QUESTIONS FOR STAFF –
2001-VAR-03, 2001-VAR-04 & 2001-VAR-05 – Freitag**

Clements: Ok, then I will give this one a try. **In the matter of 3 design standard variances; 2001-VAR-03, Minimum Lot Size Variance to Chapter 804, 2001-VAR-04, Buildable Area Variance to Chapter 804 and 2001-VAR-05, ECO Area 3, 18 percent restriction to Chapter 825, as well as they;**

- 1) **Submit a site plan showing detailed property setbacks, septic location and the location**

DRAFT

and erosion prevention and control measures, in other words the Stormwater Pollution and Prevention Plan.

I move that we approve this, subject to that condition.

Kaczmarczyk: Can we **subject to the deck not being part of the carport** as well?

Crecelius: **Yes** we can.

Clements: A **friendly amendment**?

Kaczmarczyk: A **friendly amendment, yes**. Just the carport, not the deck. I will **second** the motion.

Wilson: I will call the roll now. The vote is on petitions number 2001-VAR-03, 2001-VAR-4 and 2001-VAR-05, the Freitag Minimum Lot Size Variance, Buildable Area Variance and ECO Area 3, 18 percent slope restriction Variance, respectively. A vote in favor is a vote to approve all 3 variances, subject to the condition that a site plan be submitted showing detailed property setbacks, septic location and the location of erosion and prevention measures, also it is conditioned upon the deck being removed. Again, a vote in favor is a vote to grant all 3 variances. Margaret Clements?

Clements: Yes.

Wilson: Bernie Guerrettaz?

Guerrettaz: Yes.

Wilson: William Hosea?

Hosea: Yes.

Wilson: Mary Beth Kaczmarczyk?

Kaczmarczyk: Yes.

Wilson: All 3 variances are granted.

The motion in cases 2001-VAR-03, Freitag Minimum Lot Size Variance from Chapter 804, 2001-VAR-04, Freitag Buildable Area Variance from Chapter 804, and 2001-VAR-05, Freitag ECO Area 3 18% Restriction from Chapter 825, in favor of approving the variances, with the conditions as stated in the motion, carried unanimously (4-0).

DRAFT

NEW BUSINESS

9. 2001-VAR-06

Gray Minimum Lot Width Variance from Chapter 804

One (1) 2.5 +/- acre parcel in Bean Blossom Township, Section 28 at 7892 N Red Hill Rd. **Zoned AG/RR.**

BOARD ACTION: Kaczmarczyk introduced the petition.

STAFF ACTION:

Myers: This is the Gray Minimum Lot Width Variance from Chapter 804. A little bit of summary and background here, the petitioner requested the design standards variance to the Minimum Lot Width requirement of Chapter 804 for the purposes of constructing a 30' by 40' pole barn/detached garage. The pole barn/detached garage will be located in an area where the lot width measures a 125'. According to Chapter 804 of the Monroe County Zoning Ordinance parcels in the Agricultural/Rural Reserve zoning district must have a minimum lot width of 200' at building line. The proposed pole barn/detached garage will be required to meet all other design standards and building code including setbacks, open space requirements and buildable area. Originally, the petitioner submitted a Pole Constructed Accessory Building application to the Monroe County Building Department for the addition of the 30' by 40' pole barn/detached garage with plumbing and electricity. Upon review of the application, staff determined that that location of the structure would be in an area that does not meet the minimum lot width and would require a variance. According to the petitioner, the location of the proposed pole/detached garage was selected to be in close proximity to the home and driveway for easy access. The property is located at 7892 North Red Hill Road in Section 28 of Bean Blossom Township. The site is zoned Agricultural/Rural Reserve and the surrounding properties are also zoned Agricultural/Rural Reserve. The current use of the property is residential and most of the surrounding uses are residential or agricultural. Here we have a site conditions map. The site currently contains a 1,254' home and a small shed that can be viewed on the available aerial imagery here has since been removed. The site has frontage and access on Red Hill Road. The site utilizes a septic system that is located in the front yard and will not be impacted by this proposed structure. There does appear to be a karst feature present on the southwest corner of the lot and another karst feature is present to the neighboring property to the south, approximately 25' from the shared property line. FEMA Floodplain is not present on the property and there are minimal locations on the property where slopes are greater than 15 percent, as you can see on the slope map here. Those red areas are the 15 percent or more and none of those slopes will be disturbed with the placement of this structure. Drainage on the site runs to the northeast and also the west from a high point where the existing home is located. The Comprehensive Plan has this site designated as Rural Residential and now here we have some photographs of the property. These two are of the driveway cut and access along North Red Hill Road. This is up along the driveway. You can see the existing home here and now this is at the end of the driveway and you can see the stakes where they have proposed the structure to be placed. Some more photographs here. The bottom right is a better image of those stakes that you can kind of see in the foreground of that proposed structure. This is going across the yard here and another angle of where that proposed structure will be placed. Some more photographs here of the back yard and that south property line where you can see the trees. That is the bottom right photograph. Now here we have aerial imagery. You can see the existing home and right about to the south you are looking south from this perspective so to the south of the rv or camper that is about where the location will be for the detached garage/pole barn structure. Here we have the petitioner's

DRAFT

statement and this is in your packet. Now we have some site plans and construction plans here. You can see the close proximity that the new structure will have with the home and the septic field is in the front yard. So, it will not be disturbed. Here we have another site plan for the structure. You can see that they do intend to have electricity and plumbing to the structure. Overall, staff recommends approval of the Minimum Lot Width requirement to Chapter 804, based on the findings of fact and subject to the Monroe County Highway Department and Stormwater Engineer reports. I will now take any questions.

RECOMMENDED MOTION:

Staff recommends **approval** of the minimum lot width requirement to Chapter 804 based on the findings of fact and subject to the Monroe County Highway Department and Stormwater Engineer reports.

FINDINGS OF FACT: Minimum Lot Width

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

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

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

Findings:

- The site is 2.5 +/- acres and is zoned Agriculture/Rural Reserve (AG/RR);
- The site is accessed off of N Red Hill RD, a local road;
- The site is not in the Environmental Constraints Overlay;
- There is one visible karst feature on the site, and one visible karst feature offsite on the neighboring property to the south;
- There is no FEMA floodplain delineated on this site;
- DNR Classified Forest is located approximately 0.25 miles to the west and approximately 0.16 miles to the north of the property;
- Approval of the variance would allow the construction of a 30' x 40' pole barn/detached garage with indoor plumbing and electric;
- The petitioner's site is predominately flat with the majority of the property exhibiting slopes under 15 percent.
- The pole barn/detached garage structure will meet all other required design standards;
- **Conclusion:** It would not impair the stability of a natural or scenic area.

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

Findings:

- See findings under A(1);
- The property is addressed off of N Red Hill RD, a local road that runs along the western

DRAFT

property line;

- The site utilizes a septic system;
- The proposed pole barn/detached garage will not be located in any yard setback;
- The proposed pole barn/detached garage will not be located within any easements;
- The proposed pole barn/detached garage will not be located near the septic system;
- The construction of a pole barn/detached garage will have any foreseeable impact on utilities;
- **Conclusion:** It would not interfere with or make more dangerous, difficult, or costly, the use, installation, or maintenance of existing or planned transportation and utility facilities.

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

Findings:

- See findings under A(1) and A(2);
- The property is zoned Agriculture Rural Reserve (AG/RR);
- The required minimum lot width is 200’;
- The lot width measures approximately 125’ at the building line of the proposed pole barn/detached garage;
- The use is residential with surrounding areas being residential or agricultural;
- The Comprehensive Plan designates this area as Rural Residential;
- This is a preexisting lot that has not changed dimensions since before the current zoning ordinance;
- **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 with the relevant zoning district.

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

Findings:

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

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

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

Findings:

DRAFT

- See findings under A(1), A(2), and A(3);
- The purpose of the minimum lot width is to preserve the general character of zoning district;
- **Conclusion:** Approval of the variance would not significantly impact the purposes of the design.

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

Findings:

- See findings under A(1) and A(2);
- The lot drains to the northeast and to west the with a high point existing approximately where the existing single family residence is located;
- The proposed pole barn/detached garage will not interfere with any easements or utilities, and is located within the minimum setbacks;
- **Conclusion:** There are no foreseeable detrimental conditions to the use and enjoyment of other properties that would result from the proposed construction.

(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);
- Practical difficulties have been demonstrated in that the lot exists in the current configuration, which does not meet the minimum lot width for the zoning district (AG/RR);
- There exists no other feasible alternative, within the terms of the ordinance, for the landowner to place a pole barn/detached garage closely behind the home that would not violate the minimum lot width requirement no matter the design;
- The home (ca. 2000) on the property resides in an area that meets the minimum lot width requirement of 200' measured at building line.

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

DRAFT

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 – 2001-VAR-06 - Gray

Kaczmarczyk: Any questions for staff?

Guerrettaz: Drew, will you pull up the site plan again?

Myers: This one?

Guerrettaz: Yes, that one. Ok, the house is to the west and the building is just east of it. Correct?

Myers: That is correct.

Guerrettaz: So, then what is the 8 by 8 structure? Is this a separate structure at the bottom of this? If you go to the next, yeah. What is the 8 by 8??

Myers: That is a zoom in or a cut out of the

Guerrettaz: Oh, I see. Up at the northwest corner, got you.

Myers: Yes.

Guerrettaz: Thank you.

Kaczmarczyk: Any further questions for staff? Would the petitioner like to speak? You don't have to. Anyone here wish to speak on behalf of the petition? Seeing none. Would anyone here like to speak against the petition? Seeing none. I will call for a motion.

PETITIONER/PETITIONER'S REPRESENTATIVE – 2001-VAR-06 – Gray: None

SUPPORTERS – 2001-VAR-06 – Gray: None

FURTHER SUPPORTERS – 2001-VAR-06 – Gray: None

REMONSTRATORS - 2001-VAR-06 – Gray: None

ADDITIONAL QUESTIONS FOR STAFF – 2001-VAR-06 – Gray: None

FURTHER QUESTIONS FOR STAFF – 2001-VAR-06 - Gray

Clements: **In the matter of case number 2001-VAR-06, I move that we approve the Minimum**

DRAFT

Lot Width requirement to Chapter 804, based on the findings of fact, subject to the Monroe County Highway Department and Stormwater Engineer reports.

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

Wilson: The vote is on petition 2001-VAR-06, Gray Minimum Lot Width Variance. A vote in favor is a vote to approve the variance, based on the findings with the development review conditions of the Monroe County Highway and the Stormwater staff. Again, a vote in favor is a vote to grant the variance. Bernie Guerrettaz?

Guerrettaz: Yes.

Wilson: William Hosea?

Hosea: Yes.

Wilson: Mary Beth Kaczmarczyk?

Kaczmarczyk: Yes.

Wilson: Margaret Clements?

Clements: Yes.

Wilson: The variance is granted 4 to 0.

The motion in case 2001-VAR-06, Gray Minimum Lot Width Variance from Chapter 804, in favor of approving the variance, carried unanimously (4-0).

DRAFT

NEW BUSINESS

10. 2001-VAR-07 Smith & Kelly Minimum Lot Size Variance from Chapter 804
One (1) 1.03 +/- acre parcel in Bloomington Township, Section 24 at 4405
N Bramble DR. **Zoned CR / ECO3.**

BOARD ACTION: Kaczmarczyk introduced the petition.

STAFF ACTION:

Behrman: This is the Smith and Kelly Minimum Lot Size Variance from Chapter 804. It is located at 4405 North Bramble Road. This is a little small segment right off of Trailridge Road in the Bittersweet Subdivision. It is in Bloomington Township, Section 24. The Comprehensive Plan has it as Farm and Forest and the zoning here is Conservation Residential. It is also in the Environmental Constrains Overlay Area 3 of the Griffy Lake Watershed. The Conservation Residential zoning district requires a 2.5 acre minimum lot size, unless you are in a platted subdivision. That language was added in 2015. A lot of the lots that are surrounding this property are in a platted subdivision. This one is not, so it is here asking for this variance request from the Minimum Lot Size. It is 1.03 acres in size. It doesn't quite even meet the standards to issue a waiver. The lot width is a 182'. It is just enough to issue a waiver. If this variance is granted this evening then we can issue an Administrative Waiver for Minimum Lot Width. As long as you are within that 10 percent range of the 200' requirement, this is 182, they just need 180' to do that. We are going to go that route and skip the findings fact. This is the slope map. Disturbing vegetation and soil in the Griffy Watershed is on 18 percent slopes. The county adopted in 2018 the more restrictive 15 percent slopes for where structures can be located. The lot does have some buildable area available to put structures and a septic and a detached garage, which is what the petitioner is proposing for this site. Some of the site photos; the top one is where their driveway entrance is going to be. They purchased a small sliver easement so that their driveway could go in where it is not as steep area. The bottom picture is of that little, short segment Bramble Drive, which now has a street sign. The upper picture is I am kind of standing in the center of the lot looking uphill and you can see the neighboring houses just to the north, kind of in the left hand side of the picture. I turned around and was facing downhill and you can see that there is a little creek that makes a backwards "c" shape in the background there. That is a tributary of Griffy Creek. It is considered an ephemeral creek not a perennial one, so it is not as heavily regulated under our Chapter 825 standards. This is an aerial shot. The site is currently forested and you can see the surrounding subdivisions, developed houses around it. The petitioner has expressed interest in keeping as many trees as possible when they are putting their development in. This is the petitioner's letter and then they provided a very nice engineered site plan from Deckard Land Surveying. In it you see shaded in grey there, those are slopes at that higher restricted amount of 15 percent that cannot be built upon and then we also see that the proposed house is 40' by 50'. That includes any of the porches that they are wanting to add onto the back. The septic system is sized appropriately and to scale and there is the detached garage to the north there. You can see that their driveway cuts across the lot to the north, Lot 13 of the Bittersweet Subdivision and has that little bit of easement there. Just looking at the surrounding area I looked at a quarter square mile radius from the petition site and about 70 percent of the lots don't meet the minimum lot size requirements. The bulk of those are in that Bittersweet Subdivision and this is the plat. In the red circle that is where you would see where the petition site is. It was not included in this subdivision that was back in 1981. We would not create a subdivision like this today. We would meet minimum

DRAFT

lot size of the zoning district and at a minimum have a whole acre of buildable area lot. But these lots exist and we allow them to develop conservatively. In the packet, you will see that there are 4 remonstrance letters. I just wanted to make note that we have had several discussions with neighbors in that little community there and explained the petition to them and let them see the site plan. I believe some of them are here today that may want to speak about this petition. Hopefully, you had a chance to read their letters. With that, staff recommends a motion of approving the design standards variance to the Minimum Lot Size standard in Chapter 804 of the Monroe County Zoning Ordinance, based on the findings of fact.

RECOMMENDED MOTION:

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

FINDINGS OF FACT: Minimum Lot Size Standard

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

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

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

Findings:

- Approval of the variance would allow the petitioner to build a home and detached garage;
- The petition site is zoned Conservation Residential (CR) and is 1.03 acres;
- The minimum lot size in CR is 2.5 acres;
- The petitioners lot is within the Environmental Constraints Overlay Area 3 (ECO3) of Griffy Lake watershed;
- The parcel is not platted but is adjacent to the Bittersweet Woods Subdivision;
- The petitioner has submitted an engineered site plan depicting structures within Buildable Area including ECO restricted slopes;
- There is no known karst on the property;
- There is no evidence that the building would obstruct a natural or scenic view;
- There are other parcels nearby that are under 2.5 acres in size;
- Conclusion: It would not impair the stability of a natural or scenic area;

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

Findings:

- See findings under A(1);
- There is a driveway permit on file 2020007;

DRAFT

- The parcel is located off of the platted N Bramble DR, designated as a Local Road;
- Conclusion: It would not interfere with or make more dangerous, difficult, or costly, the use, installation, or maintenance of existing or planned transportation and utility facilities;

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

Findings:

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

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

Findings:

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

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

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

Findings:

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

(2) It would not promote conditions (on-site or off-site) detrimental to the use and enjoyment of other properties in the area (e.g., the ponding of water, the interference

DRAFT

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

Findings:

- See findings under A(1);
- There is no floodplain on site;
- The site drains to the southwest towards a tributary of Griffy Creek;
- The site is located in the Environmental Constraints Overlay (ECO) Area 3;
- An engineered site plan has been submitted by the petitioner displaying proposed structures and earth disturbance outside of restricted slopes;
- Conclusion: It would not promote conditions (on-site or off-site) detrimental to the use and enjoyment of other properties in the area;

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

Findings:

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

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

Findings:

- See findings under (A)(1);
- Practical difficulties have been demonstrated in that the lot exists in the current configuration, which does not meet the minimum lot size for the zoning district (CR);
- A minimum lot width variance is not required under 804-2(E)(2);
- Conclusion: The approval, including any conditions or commitments deemed appropriate, is the minimum variance necessary to eliminate practical difficulties in the use of the property;

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

DRAFT

QUESTIONS FOR STAFF – 2001-VAR-07 – Smith & Kelly

Kaczmarczyk: Any questions for staff?

Clements: I have none.

Kaczmarczyk: Ok. Would the petitioner like to speak? Come on up. Sign in, please.

PETITIONER/PETITIONER’S REPRESENTATIVE – 2001-VAR-07 – Smith & Kelly

Kelly: Hi, I am Susan Kelly.

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

Kelly: I do.

Kaczmarczyk: Thank you.

Kelly: Hi, everyone. Thank you, Tammy for all of your work. I really appreciate it and thanks folks for being out tonight. I am speaking primarily because of the letter the neighbors wrote and after sitting through one of the earlier petitions when I was listening to neighbors be in such difficult situations, I would never want to be in that situation myself. Are you willing, if you control the clicker to go to the picture that is the wood of the lot with the sort of purple or violet color?

Behrman: Yes. This one?

Kelly: There it is. As you can see, and I do want to ask Denise and Jerry here? Hi, nice to meet you. We had a chance to speak to them on the phone, which was nice. You can see that it is a wooded lot, which is part of the beauty of why we purchased it back in 2006 and what we were aspiring to when we purchased it was to eventually when we retire have a lifestyle shift where we had a little more land, a lot of trees. The architect we are working with he has strict instructions to make nature part of the home so when we look out all that we see are trees and ideally, no offense neighbors, if we look behind us we wouldn't see any houses, right. We would be so quiet in nature and I think after talking with Denise and Jerry it sounds like one of the neighbors has almost clear cut their land that I think there is quite a bit of fear of that happening with us. Our goal would to only be stewards of the land, to honor that we are so close to Griffy, which is one of the great reasons for living there and to enjoy being a part of that neighborhood, which I am sure is a very tightknit community. We have that now where we live. We are in Parkridge East and we are very close with our neighbors. We love them dearly. We would hope by moving into this intimate, small neighborhood in a wooded lot that we could actually have that experience again. So, that is what we are after, that kind of peace and quiet and wooded experience. So, thank you. Any questions?

Kaczmarczyk: Any questions for the petitioner?

Clements: I don't have any questions.

DRAFT

Kelly: Thank you for the opportunity to speak. Thanks.

Kaczmarczyk: Would anybody else like to speak on behalf of this petition? Would anybody like to speak against this petition? Step on up to the podium, please.

SUPPORTERS – 2001-VAR-07 – Smith & Kelly: None

FURTHER SUPPORTERS – 2001-VAR-07 – Smith & Kelly: None

REMONSTRATORS - 2001-VAR-07 – Smith & Kelly

Kaczmarczyk: Could you raise your right hand?

Malayeri: I am Denise Malayeri.

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

Malayeri: Absolutely.

Kaczmarczyk: Thank you.

Malayeri: Thank you. Yes, we did have a chance to speak to these people and in talking with Susan and David they seem like very lovely people. I am sure they would be wonderful neighbors. Some of our concerns as a neighborhood and we wanted to bring this to you, since we suppose that as a Planning Department your concern is about what happens to the overall picture. So, we have in addition to the 4 letters that you have we have another neighbor that has submitted a letter.

Behrman: You can start passing it that way.

Malayeri: We also have 7 different neighbor that have contacted me that were unable to be here this evening and if I need to put together a list of those people I could easily submit that also. In looking at the Rules of Procedure for the BZA, Article 7, Powers and Duties say; no variance in application of the development standards of this ordinance shall be made by the board relating to buildings, lands or premises now existing or to be constructed unless after a public hearing the board shall determine in writing the approval will not be injurious to the public health, safety, morals and general welfare of the community. My husband and I, Jerry back there, we live in the property directly north of this property that is under consideration. We are all of us significantly our properties dropped from Trailridge Road. So, on days when there is any kind of heavy rain we have a very heavy stream that comes through our yard. We had to put in a trench drain and a lot of rocks to try to keep it from just totally eroding our yard. But this also is going to flow into this lot because they are lower than we are. If it is possible to call up the site plan, please. So, you can see the areas where the slope, I think Tammy said it was 18 percent, I am kind of surprised by that because all of the pictures it is hard to get the degree of steepness but it is very steep. We are very concerned because as you look at this plan down the left side of it where there is a significant slope, in heavy rains that becomes a creek. On the south border of this there is a significant drop and I have a picture here. That is flowing all the time. This is without any rain that has happened.

DRAFT

This was taken on Sunday when it was bright and sunny. But you can see that it is a significant creek and that runs down to Lake Griffy and the watershed is certainly impacted by that. So, our concern with having a heavily wooded lot is that, I have built a house before, I don't know how many of you have had that wonderful opportunity but most contractors I can appreciate the architects are interested in saving trees and certainly Susan and David I believe them when they say they want to say they want to save trees. But I also know having worked with contractors that trees are a nuisance to them and it just slows them down from meeting deadlines. So, what often happens is that things get removed or demolished and then its, oh, I am sorry about that. Well, when you look at heavy trees and you see the silt fences that are there, I am assuming that that would help to protect some of the soil erosion. But it is not going to stop the water that is going to be flowing into that creek anytime that we have a heavy rain. The other concern we have and I think before we were aware of all of this that perhaps a site plan has even been requested to be changed but if you notice there the septic system is now being located directly above this creek that you just saw on that picture and so our question about that is I have been told by the Parks and Recreation Department representative that often times a septic is put north of the building, the home that is being built so that if there is an failure to that it will be recognized more easily than just having poor water running into Lake Griffy. These are the concerns that I have in addition to the fact that the wildlife that we all love and see in this wooded area is going to be displaced and certainly when you look at a 2,000 square foot home, a garage that is about half or larger than that size, a driveway and a septic system, there is going to have to be a number of trees that are removed from it. So, I am asking that you deny this request for a variance.

Kaczmarczyk: Thank you. Any questions for the? Excuse me, ma'am.

Guerrettaz: Your photo on your ipad or your digital device where is that drop off on the property map we have on the screen right now?

Malayeri: I don't see it on there, so, honestly I don't know. Perhaps Tammy is aware of that but I know that the creek is at the bottom where it all drops down and then it goes back up the other side.

Guerrettaz: So, essentially that is just a picture of the creek.

Malayeri: I just wanted you to see the size of the creek.

Guerrettaz: Wonderful. Thank you.

Schilling: Can you give staff that picture? Because that should be in the record.

Clements: I just don't understand where the creek is. I just don't understand on that map.

Behrman: Let me show 2 different diagrams. In this diagram, this is the zoning map and the red is the petitioner's lot. To the north of that you are going to see Griffy Creek, perennial stream and that is not what we are talking about. It is not registering on here because it's of a smaller magnitude. The slope map here maybe at the bottom, left corner there where it is really kind of red that is where I think that ephemeral stream is meandering and I think that is what they are just

DRAFT

talking about. We do know that our property lines are not perfect and I have a photo, I also took a photo while I was there and noted that it was a significant creek. It does have water running through it on the right days.

Malayeri: It has water all of the time. It just has a lot of water when it's a heavy rain.

Guerrettaz: It appears that all of the houses drain that direction. I may be wrong about that but at least up from the road coming back to the south.

Malayeri: There are 2, 3 houses that would drain into the same erosion problem that come into our yard. We are the lowest and this lot will be lower than ours.

Kaczmarczyk: Ok, thank you. Is there anyone else here that would like to speak against the petition?

Kane: The pen is gone. I am Stephanie Kane.

Kaczmarczyk: Could you sign in please?

Kane: There is no pen anymore.

Kaczmarczyk: Could you state your name, please?

Kane: Stephanie Kane.

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

Kane: I swear.

Kaczmarczyk: Thank you.

Kane: At first I would like to speak to this ephemeral creek that come up because I am the neighbor next door right across that alley way that is now called Bramble, something. The creek goes through my property. My property, I have a 3 and quarter acre property that goes down to creek and comes up the side of the hill. That creek comes off of 45, all of the water coming off the big road, comes down the hill, down Russell Road, down that hill that sort parallels that Bittersweet. It comes down off there, into that creek, under the road and goes past, goes under Bramble Drive and it where it goes under there is a big culvert that was built and then it goes into the property that we are talking about. Whenever it rains that hard that creeks fills up and backs up and it has been doing that more. We have been getting stronger storms and I have noticed that the terrane at the bottom of my property is becoming more of a wetland than a little forest hollow with a creek. The creek is significant and yes it does dry when we have droughts and we don't have rain for a long time. I wanted to thank you for the opportunity to speak and Tammy for all of your hard work and the people that want to live there, I would love to have them as neighbors if they would buy a house that already existed. I wanted to talk a little bit about how I think we got to this place where we are a bunch of neighbors who are very concerned about not taking down the trees and not

DRAFT

having more intrusions on the forest. I can see how there is a historical precedent on the zoning board for letting people build so that they can have happy lives and do the things that they want as long as it's safe. But I think we are at this moment in Bloomington where I think we are right on the edge of some serious development. The hospital is moving at pretty near the bypass, right. We are on the back end. So, if Griffy is down here and you draw a circle around it, we are right on the edge of that area. There is going to be a lot of pressure to build and the sort of culture of giving people variances when they ask for them as long as they aren't doing anything terrible, I think is fine on an individual basis. But I don't think we can do it anymore. Because what will happen is it will just turn into a big, like every other place, we will lose Griffy, which is not only something that we care about it because it's an environment for people, trees and animals but it is also our secondary water source in Bloomington. It is important that we don't little by little get a little more pollution in there. I guess what I am asking is that...

Kaczmarczyk: Pause for the bell. We do that because it is a little hard to talk over.

Kane: Ok, so I don't know, maybe I said enough. I think that may have been the end. I want us to think of this not individually, piece by piece but rather as a precedent. I just read in the paper that the code is 20 years old and you are about to spend a whole lot of money to bring in people to tell you to have a new code. But we are letting the code just go every time someone asks, what is the point in that and what is going to happen with the next code? Are you going to be more protective or less protective than Griffy? My first encounter with this code variance situation makes me really kind of nervous about the future.

Clements: We really are requesting citizen involvement in our code revision and please be active because this will set the precedent for building for the next 20 years in and around Monroe County. So, please be active involved in the code generation and review.

Kane: Ok, well, yeah I am glad. Well, one thing that is good out of this is I am now paying attention. Thank you.

Kaczmarczyk: Thank you. Is there anyone else here who would like to speak against the petition? Come on up. Please state your name.

Bauga: Melissa Bauga.

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

Bauga: I do.

Kaczmarczyk: Thank you.

Bauga: I just want to say first this is nothing personal at all to these lovely people. If this does end up happening I certainly want to be a good neighbor to them. I just want to share with you that I am a licensed landscape architect. I would for Indiana University. Day in and day out I am on construction sites. I see what happens with just the process of construction. It is a messy process no matter how careful you are. My top priority is always to protect the trees and the site as much

DRAFT

as possible. It is a very difficult task and it is something that I am constantly having to remind the contractors and other parties to just be very careful. Once we damage a site, once we remove vegetation that has been holding soil in place, we see a lot of erosion and that creates a lot of issues. On a personal note, I live in this neighborhood. I actually grew up in this neighborhood, moved away for 15 years and then bought a house here about a year ago. Because of the beauty of the neighborhood and the large trees there and some of the access to nature that you have there. So, it is a beloved neighborhood for a lot of us and a lot of us are here today, just concerned about removing more trees, seeing erosion happen, concern and I don't think the creek is actually on this couple's property. I believe it is slightly south of that as the map was showing with the red area. But it is within the area that would be a concern for erosion, I mean could move into that stream, down the slope if there is disturbance. I guess that is all that I wanted to share. Thank you.

Kaczmarczyk: Thank you. Is there anyone else here who would like to speak against this petition? Seeing none.

ADDITIONAL QUESTIONS FOR STAFF – 2001-VAR-07 – Smith & Kelly

Kaczmarczyk: I actually have a question for staff. What year was the minimum lot size put in place?

Behrman: The current zoning ordinance was adopted in 1997. The bulk of that neighborhood was created in 1981. So, those existing lots were there and then we put in our minimum lot size standards. In 2015 we added language to the zoning ordinance to allow for lots that are platted subdivisions, all those ones that are in Bittersweet, that don't meet minimum lot size they do not have to come to this board for approval for a Minimum Lot Size Variance. Is that what you were asking?

Kaczmarczyk: Yes, thank you. I just wanted clarification on that. At this point, I would entertain a motion.

Wilson: I just want to say this is a variance from the minimum lot size. What we look at, it is also a pre-existing legal lot of record, it has been here for a long time, probably predates the ordinance as well, as far as we can tell it wasn't platted. But it was created and it has been there since before the ordinance was in place. On minimum lot size, we have a lot of these come up before the BZA and what we always look at is what the characteristics of the surrounding neighborhood. Is it consistent and inconsistent with the lot size of neighboring properties? In this case this lot is even bigger than the lots directly adjacent to it. But that is what we look for. It would be inappropriate if you have a whole neighborhood full of 2 ½ acre lots to allow a lot size for a 1 acre lot but it would be inconsistent with the characteristics of the neighborhood. That is what we base our recommendation on in these cases. They are not asking for a variance from slope. They are meeting the slope requirements. It is fairly clear that the stream that was referred to earlier is not on this lot. There may be a very small drainage area on the northwest corner of this lot that goes into the stream but the stream is actually farther over on the adjacent property. That is the basis for our recommendation, we look at the surrounding neighborhoods. It is question of compatibility and to a certain extent it is a question of fairness and equality.

DRAFT

Kaczmarczyk: Thank you Larry. Yes, step back up to the podium.

Kane: While it is true that house right immediately in front on Trailridge is on a very small plot, I am next door. I have 3 ¼ acres. But just beyond that below the proposed lot is owned by Doctor Doster who has 60 acres, I believe. The creek flows through his property. So, it is true to say that in the subdivision at large there are a lot of small lots but they are single plots with the forest behind them. I don't believe there is one double plot in the whole place, not one house where there is another house behind it and then the forest. So, I just wanted to, yeah, am I mistaken?

Wilson: The plot on which your house is located in on a platted lot. Is that correct?

Kane: Yes and theoretically I could sell my back thing and let somebody build there. But I wouldn't do that because I wouldn't want the forest to be smaller.

Wilson: But you actual lot on which your house is located so a lot in the subdivision and it is ...

Clements: Can you point to it on the map up there?

Kane: I have a really have a hard time figuring out. When I look at that I think the red spot is mine.

Wilson: Your platted lot is 0.80 of an acre. Is that correct?

Kane: I just know that I own 3 and a quarter. I don't divide it up.

Clements: So, you bought several lots, basically.

Bauga: That is here. That one right there is her lot.

Clements: In front of the proposed?

Bauga: No, it's that one and I think you own that one too.

Kane: And I own the big one behind, yeah.

Wilson: When we look at these we look at the platted lots in the neighborhood, not undeveloped large lots that have never been platted.

Kane: But there is a reason they are kept that way. It is because we love the forest, so we leave them undeveloped. But that is part of our lives and you are looking at an abstract piece of paper that is saying this is one thing and I am saying this is how we live. Right.

Clements: She is saying she considers her lot, even though it is platted separately, she considers where she lives to be one lot even though she hasn't gone through the procedure to get kind of congealed into one lot.

Kane: Thank you.

DRAFT

Wilson: So, we shouldn't allow you to sell those properties separately?

Clements: This is important.

Kane: I guess this is the point where we are at, yeah. I think if it was up to our neighbors and we all go together and decided collectively how do keep the character of the neighborhood what it is, we might decide that. We might not want you to tell us that but that is essentially how we have decided to live.

Hosea: I have a question. Are all of the neighbors expressing the same concern about this?

Audience Member: (Inaudible)

Hosea: Is everybody in agreement about speaking against this? Do you all have the same concern?

Audience Member: Yes, I have 10 acres down that driveway that you see.

Guerrettaz: I think the point that Larry is trying to make is this is a platted lot that was originally designated as a single family residential home site lot and correct me if I....

Wilson: It is not a platted lot but it is a lot that existed at the time the ordinance went into effect.

Guerrettaz: Thank you. It is a lot an existed because that is where I was going with it, it existed at the time the ordinance went into effect so it does have the use for a single family home. It has a driveway permit that has been applied for. It has got a septic permit which has been applied for and the septic requirements that a petitioner has to undergo at this point in time are much more stringent than what they were 10 years ago and the systems that they are putting in and designing are much better. The placement of the house on that property when you look at the different slopes and the way the swales and the drainage comes down through there, it looks to be placed in a responsible manner. It is off of the slope areas that are delineated on the map and the septic system is back behind it so it flows down here. There is probably not going to have to be any pump system. If it is, that's permitted but it does allow gravity to bring the flow from the home into the septic system. I personally feel that this petition is in order for what the expectations of that property are.

Wilson: The point is the question before you is to whether this property is entitled to a Minimum Lot Size Variance. The question is not whether there should be development in this area. You could argue that this area shouldn't have been developed in 1981, especially these lot sizes without sewers. That is another argument as well. But it was and this lot existed at the same time it has just not been developed yet. So, the question is, is it appropriate given the surrounding characteristics of the existing lots where people have houses apparently successfully have houses is appropriate.

Guerrettaz: I concur.

Kane: Can I just provide one other insight for you?

Kaczmarczyk: Sure.

DRAFT

Malayeri: Our home being directly north of this was built in 1989. The people who built that home bought this lot and they did that in order to preserve the woods and that fact that it would not be built out. Sadly, the people who then bought the property before we did, decided to sell of this lot and then we are left with we didn't have the option because it was already sold by the time we looked at the house, although it was done in the same year 2006. Just so you know at one time this was all meant to be maintained as woods and the property but because it was two different deeds they were able to sell.

Kaczmarczyk: Thank you. Bernie, would you like to make a motion?

FURTHER QUESTIONS FOR STAFF – 2001-VAR-07 – Smith & Kelly

Guerrettaz: **In the matter of case number 2001-VAR-07, design standards variance to Chapter 840, Minimum Lot Size Standard at 4405 North Bramble Road, I recommend we approve the designs standards variance to the Minim Lot Size Standard in Chapter 804 of the Monroe County Zoning Ordinance, based on the finds of fact found in the staff report.**

Kaczmarczyk: I **second** the motion.

Wilson: The motion is on, the vote will be on petition 2001-VAR-07, Smith and Kelly Minimum Lot Size Variance. The vote is to approve the Minimum Lot Size Variance based upon staff findings. Again, a vote in favor is a vote to approve. Bernie Guerrettaz?

Guerrettaz: Yes.

Wilson: William Hosea?

Hosea: Yes.

Wilson: Mary Beth Kaczmarczyk?

Kaczmarczyk: Yes.

Wilson: Margaret Clements?

Clements: No.

Wilson: The variance is approved 3 to 1.

The motion in case 2001-VAR-07, Smith & Kelly Minimum Lot Size Variance from Chapter 804, in favor of approving the variance, (3-1).

DRAFT

Clements: Can I add an explanatory comment or no?

Wilson: Excuse me?

Clements: Can I add an explanatory comment?

Wilson: Sure.

Clements: Based in the finding of fact that were proposed by staff that I thought that the approval and it would actually affect the areas adjacent to the proposed and that it would, the approval would promote conditions that are contrary to the environmental constraints and so that is why I voted against the proposal. And not it carries, is that true?

Kaczmarczyk: Yes.

Clement: Ok. Thank you.

DRAFT

REPORTS:

Planning/Wilson: The only report I will say is we are working on developing training and education materials for the Plan Commission and the Board of Zoning Appeals. I will be sending out some written materials to all of you in the next day or so that have been prepared by the Indiana Planning Association for members of Plan Commissions and Board of Zoning Appeals and we will probably be looking to do some formal training sometime in the near future.

Clement: Wonderful, thank you. I appreciate that.

Kaczmarczyk: Thank you.

Legal/Schilling: No report

The meeting adjourned at 7:13 P.M.

Sign:

Attest:

Mary Beth Kaczmarczyk, Chairman

Larry J. Wilson, Secretary