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**BOARD OF ZONING APPEALS
Regular Meeting Minutes
March 4, 2020 - 5:30 p.m.**

CALL TO ORDER

ROLL CALL

INTRODUCTION OF EVIDENCE

APPROVAL OF AGENDA

APPROVAL OF MINUTES

February 5, 2020

CALL TO ORDER: Margaret Clements called the meeting to order at 5:30 PM.

ROLL CALL: Vicky Sorensen, Bernie Guerrettaz, Margaret Clements, William Hosea

ABSENT: *Mary Beth Kaczmarczyk*

STAFF PRESENT: Larry Wilson, Director, Drew Myers, Planner/GIS Specialist, Rebecca Payne, Planner

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

OATH OF OFFICE – Vicky Sorensen

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 February 5, 2020 minutes carried unanimously.

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ADMINISTRATIVE BUSINESS: None.

OLD BUSINESS:

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

NEW BUSINESS:

- 1. 2001-VAR-08** **Crane Minimum Lot Size Variance from Chapter 804**
One (1) 0.88 +/- acre parcel in Richland Township, Section 9 at 4991 N Loudon RD. **Zoned AG/RR.**
- 2. 2002-VAR-09** **Reiman Minimum Lot Size Variance from Chapter 804**
- 3. 2002-VAR-10** **Reiman Minimum Lot Width Variance from Chapter 804**
- 4. 2002-VAR-11** **Reiman Front Yard Setback Variance from Chapter 804**
- 5. 2002-VAR-12** **Reiman Buildable Area Variance from Chapter 804**
One (1) 0.73 +/- acre parcel in Washington Township, Section 13 at 8917 N Old State Road 37. **Zoned AG/RR.**

REPORTS:

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

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OLD BUSINESS

1. 1912-VAR-72

Cummins Version II Buildable Area Variance from Chapter 804

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

BOARD ACTION: Clements introduced the petition.

STAFF ACTION:

Myers: Thank you. This petition we have heard before. It is Old Business but since there are few new members I will go ahead and go through it like we haven't heard it at all before. I will give some updates as a timeline. January 8th was when the petition was originally heard and at that time the Board voted to continue the petition to allow for more time to appropriately address the drainage concerns on the site. We had a neighbor come in and voice their concern about a shared property line and the drainage from that shared property line into Lake Lemon and their own property. On February 5th at the Board of Zoning Appeals Meeting no drainage plan had been submitted before that hearing date so it was continued by Planning Staff. Tonight's meeting, March 4th, a drainage plan was submitted earlier this week and all parties have agreeing upon that drainage plan. Terry Quillman is here tonight to answer any questions about it as well. He approved that submitted plan as well. Let's go ahead and go back into this petition since it has been some time since we have heard it. The petitioner requests a design standards variance from Chapter 804-4 (E) of the Monroe County Zoning Ordinance. The variance request is for the construction of an attached 2-car garage outside of buildable area, or more specifically on slopes greater than 15 percent. The proposed attached garage will be placed on the western side of the house, measuring 20' by 28' feet and will be utilized for residential use. The current single family residence was constructed in 2017 and granted a design standards variance from the Buildable Area requirement by the Board of Zoning Appeals on May 4, 2016. The purpose of that variance was to demolish an old 272' square foot residence and construct a new 826' square foot residence that is there today. The variance was granted with the condition that land disturbance in the 15 percent slope area was permitted only for the single family dwelling as shown in the submitted plans and that all erosion controls were followed. In September of 2019 the petitioner applied for a design standards variance to the Buildable Area requirement for the purposes of constructing a 13' by 20' attached 1-car garage. The Board of Zoning Appeals heard this petition and it was approved in October of 2019, with the following conditions;

- 1) The petitioner submit an as-built survey for the property that includes the storage shed addition located on the north side of the house that was not originally approved.
- 2) The petitioner acquire and after-the-fact Improvement Location Permit for that structure.
- 3) The petitioner complete a drainage plan that is satisfactory to the County MS4 Coordinator.
- 4) The petitioner work with Monroe County Planning Staff to ensure placement of the 1-car attached garage does not encroach into easements on the property.

When these conditions were approved and met the variance petition moved forward and the staff received an Improvement Location Permit application from the petitioner's representative to begin construction of the 1-car garage. However, when we reviewed that application we realized that the petitioner and the petitioner's representative had increased the size of that 1-car garage to a 2-car garage and as a result since it was a deviance from the original Board of Zoning Appeals approved petition we had to apply for a new petition. That is why this case is here today and that is why it is called the Version II variance petition. This new petition is a request to build a 560' square foot

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garage and it requires a variance because it is in the slopes that are greater than 15 percent. If the variance request for the garage is approved, the petitioner is required to meet Improvement Location Permit requirements, including setbacks and all other design standards for construction of the 560' square foot attached 2-car garage. If the variance petition is denied by the Board of Zoning Appeals tonight the petitioner retains the ability to construct the 1-car garage as approved and represented in the original variance petition. This property is located out on Tunnel Road. It is 7673 North Tunnel Road. It is Benton Township, Section 34. It is on Lake Lemon. The zoning has this zoned as Suburban Residential. The Comprehensive Plan has it zoned as Rural Residential. Here we have the site conditions and the FEMA Floodplain on the property. It seems that the slide show is frozen. Here is the slope map so you can see that the majority of the property if not all of it entirely is greater than 15 percent in slope. Now here we have some site photos of the property. This top left photo is on North Tunnel Road is a higher to the right and then it offshoots down to a private drive that services several homes along this shared drive. The bottom right photograph is going down that shared drive. You can see the retaining wall there to the right and to the left is the petition site. Panning to the left you can see the single family residence that is built there now. Same with the bottom right photograph another angle of that single family residence and there here these 2 photographs are where the proposed 2-car garage will be placed. It will be kind of staggered, more closely to the shared driveway but will connected to the single family residence. Some more photographs here of the proposed site and then these are some photographs of the drive again and the second exit that goes back onto North Tunnel Road in that bottom right photograph. Here is an aerial photograph of when that single family residence was completed. You can see to the left in that photograph is the attached utility shed that was originally unpermitted. The petitioner and petitioner's representative went through all of the processes in the last Board of Zoning Appeals meeting to get that approved and that has an after-the-fact permit now. So, that is all squared away. Here we have the petitioner's letter and the consent letter. Here we have a site plan. You can find these in your packet and then is a little more of a construction plan that shows the size of the 2-car garage and kind of the construction schematics for where it will be located in relation to the slope of the area. Now, this is the approved drainage plan that was submitted and signed off by the petitioner/petitioner's representative, i.e. the builder and the concerned neighbors to the west and their builder as well. They have a home that is under construction. If you would like a better view of this document I have it here rolled up because it was submitted after the packet went out. If you want to have a look at it, let me know. I also have a letter of support from those neighbors that were originally showing some concern for the drainage. I am going to hand them out to you know because they came out also after the packet was released. Other department comments; the Highway Department didn't have any comments. Stormwater's comments were from Terry on his review of the drainage plan. I just have the quote here from him in his comment on the plan. Finally, we have the recommended motion for this petition. Staff recommends denial of the design standards variance to Chapter 804 for the Buildable Area requirement, based on the findings of fact, specifically finding C, regarding practical difficulty of having a 2-car garage instead of a 1-car garage.

RECOMMENDED MOTIONS:

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

FINDINGS OF FACT:

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

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

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

Findings:

- Approval of the variance would allow the petitioner to build a structure outside of Buildable Area, in an area with slope 15% or greater (as defined in Chapter 825 Area 2 Regulations);
- The site is not in a platted subdivision;
- The site gains access via N Tunnel Road, a gravel road;
- The site currently maintains a recently (16-R1-73) constructed single family residence;
- The proposed two-car garage addition is 560 square feet;
- The site is adjacent to residential uses;
- The site has FEMA floodplain on the north side of the lot;
- The site is adjacent to Lake Lemon, which can be considered a natural or scenic area;
- Conclusion: It would not impair the stability of a natural or scenic area;

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

Findings:

- See Findings under Section A(1);
- The site gains access via N Tunnel Road, a gravel road;
- N Tunnel Road is designated as a Local Road;
- The new structure will not interfere with the current approved septic system;
- The petitioner submitted a drainage plan, which was found suitable by the MS4 Operator, for the previous variance petition that permitted the 260 square foot one-car garage. If approved, the petitioner would need to submit new a drainage plan for approval by the MS4 Operator that reflects the new larger attached garage;
- Conclusion: It would not interfere with or make more dangerous, difficult, or costly, the use, installation, or maintenance of existing or planned transportation and utility facilities;

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

Findings:

- See Findings under Section A(1);
- The site is zoned Suburban Residential (SR);
- The character of the Suburban Residential (SR) District is defined as that which is primarily intended for existing, possibly nonconforming, recorded single family residential subdivisions and lots of record. Its purposes are to accommodate existing, substandard subdivision developments and lots, to permit the build-out of single family residential uses in those developments and lots, to encourage the development of sanitary sewer systems for the existing development in the Lake Lemon area, to discourage the development of nonresidential uses, to protect environmentally sensitive areas, such as floodplain, karst, and steep slopes, and to maintain the character of the surrounding neighborhood. Therefore, the number of uses permitted in the SR District is limited. Some uses are conditionally permitted. The conditions placed on these uses are to insure their compatibility with the residential uses. The need for expanding this district beyond the areas designated on the Official Zone Maps on the date of the adoption of the zoning regulations is not anticipated or encouraged.
- Most of the surrounding properties are zoned Suburban Residential (SR);
- The proposed attached two-car garage would meet density, bulk, setback and area standards for Suburban Residential (SR);
- The proposed attached two-car garage meets all other requirements from Chapter 804-4(E), excluding the 15% slope requirement;
- The site is an existing parcel of record;
- Conclusion: The character of the property included in the variance would not be altered in a manner that substantially departs from the characteristics sought to be achieved and maintained within the relevant zoning district;

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

Findings:

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

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

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

Findings:

- See Findings under Section A;
- The variance from slope requirements only applies to the proposed attached two-car garage structure. Any future expansion on this site would require a buildable area variance at a minimum;
- A variance from the slope requirements was granted for the construction of current single family residence in May 2016;

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- Conclusion: The specific purposes of the design standard sought to be varied would be satisfied;

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

Findings:

- See Findings under Section A and B(1);
- Conclusion: It would not promote conditions detrimental to the use and enjoyment of other properties in the area;

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

Findings:

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

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

Findings:

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

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

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

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QUESTIONS FOR STAFF – 1912-VAR-72 – Cummins

Hosea: I have a question. Can you help me to understand finding C, specifically?

Myers: Regarding practical difficulties?

Hosea: Yes, because the recommended motion is to deny based on finding C.

Myers: Finding C says; The approval including any conditions or commitments deemed appropriate is the minimum variance necessary to eliminate practical difficulties in the use of a property which would otherwise result from a strict application of the terms of the zoning ordinance. For the garage addition proposal the Planning Staff found that practical difficulty did not exist on the property because the use of the property as residential will not be affected whether or not they have a 1-car garage or a 2-car garage.

Hosea: Ok.

Clements: Are there any other questions for staff?

Myers: Does that adequately answer your question?

Hosea: Yes, thank you.

Clements: Are there any other questions for staff from the Plan Commission members? Ok, would the petitioner or the petitioner's representative like to speak on behalf of this case? If so, please come to the podium, sign in and raise your right hand.

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

Clements: Give us your name and raise your right hand.

Cummins: I will sign in first.

Clements: Ok and what is your name, sir?

Cummins: Bob Cummins.

Clements: Bob Cummins do you swear to tell the truth, the whole truth and nothing but the truth?

Cummins: I do.

Clements: Ok, thank you so much Mr. Cummins.

Cummins: To start off with, we have had a long discussion with the neighbor about whether it would be a 1-car garage or a 2-car garage. We have an agreement with the neighbor that it will be a 2-car garage. Actually a 2-car garage makes sense because if you went out to the property the

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neighbors concern was drainage. If you look at the plan the 2-car garage is going to be about a 5' foot setback, 6 or 7 maybe depending on where it on our property line. The house that is next to us is a 5' foot setback from the property line. So, basically what you have between the two residences ours being the garage connected to the house and theirs being their house is about 10 feet, give or take. It falls within the guidelines and so forth. The idea with both parties and this was discussed last August and still is the wish of both parties is that we have the same level of land between the parties that will actually come to a little bit of a swale in the middle. So, as you go down the property line you are going to have a little bit of a swale there, the idea being that would direct if there was any rain water or whatever, that would direct the water down to the lake. It actually benefits both parties. We have discussed that for quite a while now. The reason we went to a larger garage was as we went into this process, my wife and I decided that we needed to have more storage out at the lake. We had built the residence there as a cottage to be used as such. Over time we found out two things, one is you don't have enough room to store everything. If you have ever been on a lake, as we have learned there is not enough room there. The other thing is that as we got the plans for the single-car garage there are two things that came up to use, one is the cost and two was that was we talked about it more, the more and more my wife and I talked about it, the more and more we thought, you know what, why don't we just in a couple of years sell our house and move out to the lake and make that residence out to the lake our permanent residence. Sell the home that is here in Bloomington, we have a home here in Bloomington, sell it and move out there and we felt that if we did we would need to 2-car garage and that is reason why you see it. That wasn't any part of anybody's idea to deceive anyone, it was just simply as we got into this process, something we looked out. Ok, here is what a single car garage would cost us. Here is what a 2-car garage would cost us. You know, it really makes sense for us to go that way and that is the reason why we did it. If you think about the drainage. We are talking about a 35' foot piece of property that goes down to the lake. 20' feet of that is going to be a garage that any rain water that comes down is going to collect in the gutters and it is all going to be going down to the lake. Any rain water that comes off of the road is going to be collected in, I don't know what you call that gate that goes in front of a garage door. It goes down to that water and also is pumped to the lake, not pumped but also drains down to the lake. Then you got the swale between the two properties which benefits both properties. I mean, that is reason for the 2 car. That is reason for the change. I will say that my neighbor and I have had some difficulties about this whole drainage thing. I won't deny that. We had Mr. Quillman come out and he went through it with both builders there, we had both owners there. We went through the whole thing. We agreed to it. What you see up there is what was agreed to by both parties. So, we ask that it be approved.

Clements: Thank you. Do any members of the commission have questions for Mr. Cummins? Ok. Thank you Mr. Cummins. Is there anyone else who would like....

Cummins: Excuse me.

Clements: Yes, sir.

Cummins: I would like to add two other things to this. I remember an individual along time ago when I worked, I am retired now, head of sales for a department said to me, the biggest problem you have with sales people was they don't know when to shut up and take the order and run with it. I guess I am one of those. I don't know when to be quiet and leave. Two things; I wasn't here

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for the January meeting, probably should have been but I wasn't. My representative, Mr. McArdle, our builder was here and I understand from beginning there was some things said into the record about Mr. McArdle and about the practices and I wish to make a public statement that I disagree with those comments and I would like to go on the record as I disagree with those comments. There was also a letter handed out, a 23 page letter, that was handed out. I was also go on the record and the reason why I want to go on the record is not to get into this, this is the last thing you guys want, I am sure you would rather get out of here and go see the game tonight as I would. But it's in the record now and a record has been established. I have been around the horn along time enough to know that at some point in time the record may come back to light so I just want to enter my comment tonight that I find that record inaccurate. I find it misleading and I object to it and if this board would ever want me to put in writing a response to that both from an attorney, I have even retained a hydrologist if needed to take a look at this thing. Because it has just gone to the point of being crazy. So, as I said earlier, I probably should have been quiet a few minutes ago and left and hopefully you guys would approve it. We do have an agreement with the parties. All parties were in agreement and I hope that you go ahead and proceed to approve it. I thank you for our time.

Clements: I am sorry, Mr. Cummins because you did bring it up. I just wondered what you are referring to. I have a copy of the January minutes before me and I wonder what exactly it was that was said about Mr. McArdle that you find objectionable.

Cummins: It was said and in writing, I wasn't here so I don't have direct, I know what was put into writing about deceptive building practices.

Clements: You mean in the packet?

Cummins: In that I just wonder what that has to do with anything. When we built the lake cottage out there, again the idea was it was cottage and we go out there and enjoy it in the summer, fall and so forth. As we got down to the final last few minutes before the foundations were going to be poured out there, my wife and I were out there with the builder and we were looking at the left side of the property we needed to put a cement pad down so we could put like one of these barn type wooden sheds on there. So you could store like a lawn mower or something such as that. As we got to talking that was what my wife wanted to do. I argued with her and said, you know that doesn't really look that good and at some point in time we are going to have to replace it after you get it down there. I talked to Mr. McArdle can we put something onto the side of the house that would be more pleasant to look at maybe and would serve as a shed. My mistake, I never thought about, it's not my bailiwick building and so forth, should have gone back to the appropriate department at the county and said hey, look we need to revise the permit so we can have this shed. For some reason his shed has been an issue. I don't know why but we have got the appropriate building permit now. We paid for it and everything is in order.

Clements: Do you have any questions? Ok, thank you Mr. Cummins. Is there anyone else who would like to speak in favor of this petition who is in the audience? Seeing none. Is there anyone present who would like to speak in opposition to this petition?

Cummins: Thank you for your time.

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Clements: Thank you, Mr. Cummins. Ok, now is there any discussion among the Plan Commission members?

Guerrettaz: BZA.

Clements: Yes, BZA members.

SUPPORTERS – 1912-VAR-72 – Cummins: None

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

REMONSTRATORS - 1912-VAR-72 – Cummins: None

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

Guerrettaz: My observation is that very happy that Mr. McArdle and Mr. Cummins had time to go speak with the neighbors and draw them into the process because of the concerns of drainage. I think I took notes through the packet and a lot of the things that Mr. Cummins spoke to were things that I thought were positive about what they want to do and how we got here, you know. Sometimes it just happens but I think overall because the neighbors are working with them, they are working with the neighbors. Mr. Cummins observations of his builder is very positive because you don't always see that. I think the one thing that resonated with me the first time we saw it and now again, you know, we have stuff and the stuff we have if it's not in the house it ends up in the garage. If you don't have a garage it ends up in front of garage or on the side. So, I think it is probably appropriate for this house. Again, why we got here doesn't really matter to me I guess but I think it is probably going to serve the area well and the added bonus of the neighbors being in agreement with what is going on and there are drainage improvements that should mitigate any of the questions that are out there. I think it's positive. Those are my observations.

Clements: Does anybody else have a question or a comment? I have one myself if it's ok. I would like to interject it and it's just to remind everyone who is viewing and anyone who is building or attempting to build that any time there is a change in your plans, you must coordinate with the Plan Department because otherwise you are risking a lot of investment and goodwill in the community. All plans need to be coordinated. If in doubt call the Plan Department. That is my encouragement. Does anybody else have any recommendations or thoughts or questions about this particular case?

Hosea: Yeah, I have one. The Planning Department recommended against the motion. Is that correct?

Myers: That is correct. We are obligated to recommend denial when one of the findings of fact, any one of them, is not proven to be sufficient.

Hosea: So, if the board approves this request what kind of problems is the property owner looking at farther down the line?

Myers: If the board approves it they will be granted the Buildable Area variance for the 2-car

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garage. Now, if they were to come back with any other building plans to add onto that garage or to the home, they would need to go through the Buildable Area process again.

Hosea: Right, that is not my question.

Myers: Oh, ok.

Hosea: Would there be any problems with the structure itself?

Myers: I don't know if I could speak on the ability of the structure to be sound if the 2-car garage was not completed or if it was completed.

Hosea: Ok.

Wilson: Presumably where ever the garage and whatever size it is it will be built according to code as a part of the building code process. So, it is not a question of the soundness of the structure, it is really a question of the size and location of the structure that is subject of the variance. We often recommend in a case where the ordinance could be complied with merely by reducing the size of the dwelling or the structure, we feel really can't recommend that as a practical difficulty not have a 2-car garage when there is enough room for a 1-car garage. The Board of Zoning Appeals can find that to be a practical difficulty and often does find it to be a practical difficulty in utilizing a piece of property. That is kind of the distinction between our findings and the findings you can make as a BZA. We are obligated to defend the ordinance and that is the role that we take. Your obligation is to provide relief from the ordinance where in a particular case or particular location it is creating practical difficulties with the utilization of the property.

Hosea: Ok, thank you. I think you just changed my mind.

Clements: I will entertain a motion.

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

Guerrettaz: In the matter of case number 1912-VAR-72, Cummins Version II Buildable Area Variance from Chapter 804, I move that we approve the variance based on the drainage plan that Terry Quillman reviewed and we have seen as evidence in the meeting and I believe practical difficulties have been met.

Hosea: **Second.**

Clements: Ok, Mr. Wilson, will you please call the roll?

Wilson: The vote is on petition 1912-VAR-72, Cummins II Buildable Area Variance. A yes vote is a vote to approve the variance based upon the findings with the amended findings that there was practical difficulty shown and with the conditions set forth in the staff report and upon the Drainage Engineer's recommendation. Again a yes vote is a vote to approve the variance. Margaret Clements?

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Clements: Yes.

Wilson: Bernie Guerrettaz?

Guerrettaz: Yes.

Wilson: William Hosea?

Hosea: Yes.

Wilson: Vicky Sorensen?

Sorensen: Having just received the packet I will have to abstain.

Wilson: I show 3 yes votes and an abstention, the variance is granted.

The motion in case 1912-VAR-72, Cummins Version II Buildable Area Variance from Chapter 804, in favor of approving the variance with the findings as amended in the motion, carried (3-0).

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NEW BUSINESS

- 1. 2001-VAR-08 Crane Minimum Lot Size Variance from Chapter 804**
One (1) 0.88 +/- acre parcel in Richland Township, Section 9 at
4991 N Louden RD. **Zoned AG/RR.**

BOARD ACTION: Clements introduced the petition.

STAFF ACTION:

Payne: Good evening. This is a petition for a Minimum Lot Size Variance from Chapter 804. The property is located at 4991 North Louden Road. It is a 0.88 acre parcel in Richland Township, Section 9. It is zoned Agricultural/Rural Reserve. The surrounding properties are also zoned Agricultural/Rural Reserve. The surrounding uses are primarily residential and agricultural. The property is currently vacant and the property directly east of the petitioner is in the Town of Ellettsville jurisdiction. The site is accessed off of North Louden Road, which runs north/south on the east side of the property. There are no karst features apparent on the site. It is not in a FEMA Floodplain and it does not reside in an Environmental Constraints Overlay. North Louden Road is classified as a local road. The site does have some slope restrictions along the southern portion of the property but this does not impact the petitioners proposed location of the barn. The barn will be built outside of the sloped areas there towards the north. The site is designated Rural Residential in the Monroe County Comprehensive Plan. Here we have some site photos and I apologize in just looking through my slides I realize I have got these labeled incorrectly. So, I will just talk you through them real quick. Photo 1 here is actually standing at the site looking to the east. Photo 2 also looking east. Photo 3 I am standing in the middle of the access point, again looking east, so here I showing the character of the surrounding area. Photo 4 is looking west from the access point or west-ish. Photo 5 is looking south. Photo 6 is looking north again. I have included the site plan here. You can see that the proposed barn is located in the northwest corner and it sits 25' feet away from the property line which is sufficient in this zone. The petitioner did downsize the size of his proposed barn to meet the 1,750' square foot requirement. His proposed barn is 1,740' square feet. Here is a detailed site plan. You can see the dimensions here and finally we have the petitioner's letter. He is intending to build the pole barn to store hay. Staff recommends approval of the Minimum Lot Size requirement of Chapter 804, based on findings of fact.

RECOMMENDED MOTION:

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

FINDINGS OF FACT: Minimum Lot Size Chapter 804

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

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

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

Findings:

- Approval of the variance would allow for construction of a 30' x 58' pole barn on the

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property.

- The existing lot is 0.88 acres and therefore falls short of the minimum 2.5 acres required in the AG/RR zoning.
- The barn will meet all required design standards;
- There are no visible karst features on the site or FEMA floodplain;
- There are no designated natural or scenic areas nearby;
- **Conclusion:** Approval of the variance would not impair the stability of a natural or scenic area.

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

Findings:

- See Finding A(1);
- The property is located off an easement that runs perpendicular to N Loudon Rd;
- The pole barn will not be located in any yard setback;
- Allowing the pole barn in its proposed location will have no foreseeable impact on utilities;
- **Conclusion:** Approval of the variance would not interfere with or make more dangerous, difficult, or costly, the use, installation, or maintenance of existing or planned transportation and utility facilities.

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

Findings:

- See Findings above;
- N Loudon Rd is designated as a Local Road with 50' of ROW per the 2018 Thoroughfare Plan;
- The property is zoned Agriculture Rural Reserve (AG/RR);
- The required minimum lot size is 2.5 acres;
- The use of the property is agricultural;
- The surrounding areas are residential and/or agricultural;
- The Comprehensive Plan designates this area as Rural Residential;
- The proposed pole barn meets all other design standards;
- **Conclusion:** Approval of the variance would not alter the character of the property in a manner that substantially departs from the characteristics sought to be achieved and maintained with the relevant zoning district.

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

Findings:

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- The Board of Zoning Appeals may request the petitioner to address any other significant public health, safety, and welfare concerns raised during the hearing;
- (B) The approval, including any conditions or commitments deemed appropriate, would not affect the use and value of the area adjacent to the property included in the variance in a substantially adverse manner, because:**

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

Findings:

- See Findings above;
- The purpose of the minimum lot size is to preserve the general character of zoning district;
- Addition of a pole barn to the lot is in keeping with the use and general character of the area;
- **Conclusion:** Approval of the variance would not significantly impact the purposes of the design.

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

Findings:

- See Findings above;
- The lot drains primarily to the north with a high point existing to the south of the lot;
- The proposed location of the pole barn does not interfere with any easements or utilities;
- **Conclusion:** There are no foreseeable detrimental conditions to the use and enjoyment of other properties that would result from maintaining the current location of agricultural building.

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

Findings:

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

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

Findings:

- The design standard variance request is the minimum required for any development to the lot;

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

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

QUESTIONS FOR STAFF – 2001-VAR-08 – Crane

Clements: Are there any questions for staff? Is the petitioner or the petitioner’s representative here? Please come forward and sign in and state your name.

PETITIONER/PETITIONER’S REPRESENTATIVE – 2001-VAR-08 – Crane

Crane: My name is Mel Crane.

Clements: Mr. Crane, would you please raise your right hand? Do you swear to tell the truth, the whole and nothing but the truth?

Crane: I do.

Clement: Thank you, Mr. Crane. If you would like to speak we are ready to hear.

Crane: I currently live in Avon and I have had some issues with items being stolen out of the barn that I currently use. Things have been stolen out of rental places. My two sons; one lives in Ellettsville and one lives on the east side of Bloomington. We were looking for lots that I could put one on, pole barn and the lot that we selected is about three quarters of a mile away from my youngest son lives. The gentleman that lives in front of this parcel, I have known him for 35 years and I have met the other gentleman that is on the back side of the lot. We have picked a contractor and we are just waiting on, and we come to an agreement with the lady who is selling the lot. But it is based on, you know, an approval of the variance. So, that is where we are at.

Thank you. Does anyone have questions for Mr. Crane? No. Thank you, sir.

Wilson: I just have one question for clarity. You are not planning to live in the pole barn?

Crane: Absolutely not.

Wilson: Ok.

Clements: Thank you sir. You may take a seat and I will ask if there are any other members of the audience who would like to speak in favor of the petition? Is there anyone here who would like to speak in opposition to the petition? Seeing none. We will come back to the Board of Zoning Appeals and discuss the matter if there are any comments or questions or deliberations and if not we will entertain a motion.

SUPPORTERS –2001-VAR-08 – Crane: None

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FURTHER SUPPORTERS – 2001-VAR-08 – Crane: None

REMONSTRATORS - 2001-VAR-08 – Crane: None

ADDITIONAL QUESTIONS FOR STAFF – 2001-VAR-08 – Crane: None

FURTHER QUESTIONS FOR STAFF – 2001-VAR-08 – Crane

Guerrettaz: In the matter of case 2001-VAR-08, Crane Minimum Lot Size Variance from Chapter 804, I move we approve the variance based on the staff report and the findings of fact.

Clements: Is there a second?

Hosea: I **second**.

Clements: Mr. Wilson, will you please call the roll?

Wilson: The vote is on petition number 2001-VAR-08, Crane Minimum Lot Size Variance. A vote in favor is a vote to grant the minimum lot size variance, based upon the findings and the conditions set forth in the report. Bernie Guerrettaz?

Guerrettaz: Yes.

Wilson: William Hosea?

Hosea: Yes.

Wilson: Margaret Clements?

Clements: Yes.

Wilson: Vicky Sorensen?

Sorensen: Abstain.

Wilson: I will note your abstention. The variance is granted by 3 with 1 abstention. It is granted.

The motion in case 2001-VAR-08, Crane Minimum Lot Size Variance from Chapter 804, in favor of approving the variance, with the condition as set forth in the motion, carried (3-0).

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NEW BUSINESS

- 2. 2002-VAR-09 Reiman Minimum Lot Size Variance from Chapter 804**
- 3. 2002-VAR-10 Reiman Minimum Lot Width Variance from Chapter 804**
- 4. 2002-VAR-11 Reiman Front Yard Setback Variance from Chapter 804**
- 5. 2002-VAR-12 Reiman Buildable Area Variance from Chapter 804**
One (1) 0.73 +/- acre parcel in Washington Township, Section 13 at
8917 N Old State Road 37. **Zoned AG/RR.**

BOARD ACTION: Kaczmarczyk introduced the petition.

STAFF ACTION:

Myers: Thank you. Just to clarify this is for 4 variances. We have a Minimum Lot Size, a Minimum Lot Width, a Front Yard Setback Variance and a Buildable Area Variance, all in one. Here we have a quick summary of all 4 of the variances being petitioner for tonight. We have the minimum lot size of their zoning district, which is Agricultural/Rural Reserve and that minimum lot size of 2.5 acres. This parcel is only 0.73 acres. The minimum lot width for the Agricultural/Rural Reserve is 200' feet at building line and their lot width at building line would be 133' feet. The front yard setback, they are proposing a 0' front yard setback. We will get into more of the details on that one and they are also proposing a buildable area variance because there are some portions of the property that are higher than the 15 percent mark and we will get into that as well during this presentation. The petitioner has requested 4 design standards variances from Chapter 804 in order to build and approximately 2,300' square foot single family residence on pre-existing nonconforming lot. The lot does not contain any structures and is unplatted. Though the lot is not in a platted subdivision it is adjacent to the Town of Hinudstan Heights plat and referenced in a survey in 2006, which is one of the exhibits in your packet. Unique shape of the lot is a result of the remaining acreage after the Town of Hinudstan Heights and the cemetery were created. The amount of buildable area on this lot closest to North State Road 37 is approximately 0.6 acres or 2,700' square feet. The area of buildable exhibits a triangle shape which is why the petitioner is requesting variances from the Front Yard Setback to allow for more buildable area towards the road. The petitioner is requesting a variance from the required 2.5 acre Minimum Lot Size in order to develop this approximately 0.73 acre lot. The lot also does not conform to the Low Width of 200' feet at building line. Since the configuration of the lot is difficult to develop the petitioner has requested a Front Yard Setback variance to build the home 35' feet from the centerline of North State Road 37, which is encompassed in right of way. The front yard setback is required to be 35 feet from right of way, which would mean a 70' foot setback from centerline, which would eliminate a lot of space in that area. Lastly, the site where the home would be located exceeds 15 percent slope. The petitioner has stated that they are not interested in pursuing a full boundary survey before this petition, which was the request by Planning Staff. However, the petitioner does intend on flagging the location of the home and the septic via survey in relation to the property lines. There is one utility line with AT&T within the right of way of this property and the petitioner has stated that AT&T will be moving that utility line since they do not have legal rights to be located there. REMC Electric does have an easement within that 35' foot right of way but no utilities are currently located there. If requested REMC or the Highway Department could locate improvements up to that 35' foot area and the proposed front setback is to ensure adequate area for future right of way improvements. It was stated by the Highway Department that they don't have any plans currently to improve or widen that right of way along North Old State Road 37.

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The septic system is going to be located in the western portion of the property and the petitioner is aware that they will need to confirm the property lines for that septic system to ensure it's not located off site. The petitioner has applied for and received a Driveway Permit from the Highway Department. This property is located at 8917 North Old State Road 37. It is in Washington Township, Section 13. Here you can see kind of the configuration of the lot. It is kind of like a bowtie shape and its current zoning is Agricultural/Rural Reserve. There are some Suburban Residential to the south and Forest Reserve to the north. Here we have a site conditions map. Here we have the slope map. That blue triangle is the approximate location of where the home is proposed to go. So, you can see that this lot is pretty constrained by some of the factors here, by its lot size, width and other environmental factors. If you notice in the top corner of the rectangle that is where they will be dipping into the 15 percent slope area and they plan to utilize that and create a walkout basement type design. The Comprehensive Plan has it designed as Rural Residential. Here we have some site photos are of the potential driveway cut. This is along North Old State Road 37. Here we are going to pan from the left to the right, so we are going to pan from the southwest and go along to the looking west and then eventually to the north. The top left is looking southwest of the site. It is very wooded right now. We are going to continue on here panning to the right. You can kind of see where that wood lot ends and that is approximately where the property line ends as well. Here are some photographs of the petition site. It is very wooded right now. This is a photograph you are standing on the petition site or on the property line looking east across the road. Here is a 2019 aerial photograph of the petition site. Here we have the petitioner's letter to the Board of Zoning Appeals as well as their proposed site plan that kind of show them abiding by the side setbacks of 15' feet but building right up to that right of way line where it would be the 0 foot front setback. Here we have the 2006 survey that was a reference with the respect to the Town of Hindustan. You can see there in the top corner where the petitioner site is there is a dedicated 35' foot right of way. According to the Monroe County Zoning Ordinance and the Thoroughfare Plan there would be an additional 35' foot setback from that 35' foot right of way and that would essentially eliminate a lot of that area there to be built on. This image has a buffer so there was line drawn along the center line of the road and then it was buffered 35' feet on either side to kind of show the right of way, what the right of way would take with other properties in the area. The Town of Hindustan properties they have a smaller right of way according to their plat so they don't technically abide by this buffer here. But if you look closely, this buffer of 35' feet on either side would actually go right up along several other homes in the area. That 35' foot right of way that was dedicated on the property was substantial. Here are other department comments. The Highway Department had comments regarding the driveway cut. Just clearing some trees to get a better site distance. The Stormwater Department didn't have any comments. Here we have the recommended motion. We have a recommended motion for each variance. We recommend approval of the design standards variance to Chapter 804 for the Minimum Lot Size, based on the findings of fact. The Planning Department also recommends approval of the design standards variance to Chapter 804 for the Minimum Lot Width, based on the findings of fact, with the following condition;

- 1) The site plan for the proposed home must be certified by a surveyor/engineer. In addition, the home and septic location must be flagged prior to issuance of the building permit.

Finally, the Planning Department recommends denial of the design standards variance to Chapter for the Front Yard Setback, based on the findings of fact; particularly finding C with practical difficulties. I will read that finding here, one moment while I find it. Finding C; it was found that the property owner could propose a smaller home size and therefore eliminate the need to encroach

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that much into the Front Yard Setback and that is no hardship in reducing the proposed size of the home to meet the required setbacks. Finally, the Planning Department recommends denial of the design standards variance to Chapter 804 for the Buildable Area 15 percent slope requirement, based on the findings of fact and the same finding, C relating to practical difficulties. That finding, the property owner could propose a small home size and therefore eliminate the need to encroach into the non-buildable area of the property in that there is no hardship in reducing the proposed size of the home to meet the Buildable Area requirement. I will now take any questions.

RECOMMENDED MOTIONS

Approve the design standards variance to Chapter 804 for Minimum Lot Size based on the findings of fact.

Approve the design standards variance to Chapter 804 for Minimum Lot Width based on the findings of fact with the following condition:

1. The site plan for the proposed home must be certified by a surveyor/engineer. In addition, the home and septic location must be flagged prior to issuance of the building permit.

Deny the design standards variance to Chapter 804 for Front Yard Setback based on the findings of fact.

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

FINDINGS OF FACT: Minimum Lot Size

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

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

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

Findings:

- Approval of the variance would allow the petitioner to develop this pre-existing nonconforming lot of record;
- The site is currently vacant;
- The area is not located within the floodplain or the Environmental Constraints Overlay area;
- Conclusion: It would not impair the stability of a natural or scenic area.

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

Findings:

- N Old State Road 37 is a Major Collector maintained by the County Highway Department. There are currently no plans to improve N Old State Road 37;

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- The septic system will be on the west side of the property and therefore will not interfere with the proposed home location;
- Conclusion: It would not interfere with or make more dangerous, difficult, or costly, the use, installation, or maintenance of existing or planned transportation and utility facilities;

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

Findings:

- See Findings under Section A(1) and A(2);
- The zoning of the properties to the south include Suburban Residential (SR). This lot cannot be rezoned to SR due to the minimum lot size being less than 1 acre. Even so, buildable area and front setback variances would still be necessary with the proposed development;
- Other lots in the Hindustan Heights plat have less than 0.5 acre lot sizes;
- 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);
- Any proposed structure on this lot requiring a building permit would need a minimum lot size and lot width variance;
- 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);
- The property drains to the northwest. The neighbor to the north has a pond on the property, which is where the stormwater currently drains;
- If the petitioner is able to work with a surveyor to flag the location of the home and septic, they could ensure the structures will be in the correct location;
- There is no FEMA floodplain on the site;
- Conclusion: It would not promote conditions detrimental to the use and enjoyment of other properties in the area.

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

Findings:

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

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

Findings:

- There is a hardship in that the property owner cannot do any development to this pre-existing nonconforming lot of record without first receiving a lot width and lot size variance, or seeking a rezone. The lot was in existence prior to the 1997 zoning ordinance and therefore was made nonconforming by the ordinance. A rezone to Suburban Residential is also not a viable option since the net acreage of the lot is less than 1 acre;

FINDINGS OF FACT: Minimum Lot Width

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

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

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

Findings:

- Approval of the variance would allow the petitioner to develop this pre-existing nonconforming lot of record;

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- The site is currently vacant;
- The area is not located within the floodplain or the Environmental Constraints Overlay area;
- Conclusion: It would not impair the stability of a natural or scenic area.

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

Findings:

- Due to the unique shape of the lot, the area considered to have the widest lot width is within the front setback. The petitioner is requesting a front setback variance to allow for more lot width at the proposed building line;
- N Old State Road 37 is a Major Collector maintained by the County Highway Department. There are currently no plans to improve N Old State Road 37;
- The septic system will be on the west side of the property and therefore will not interfere with the proposed home location;
- Conclusion: It would not interfere with or make more dangerous, difficult, or costly, the use, installation, or maintenance of existing or planned transportation and utility facilities;

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

Findings:

- See Findings under Section A(1) and A(2);
- The zoning of the properties to the south include Suburban Residential (SR). This lot cannot be rezoned to SR due to the minimum lot size being less than 1 acre. Even so, buildable area and front setback variances would still be necessary with the proposed development;
- Other lots in the Hindustan Heights plat have approximately 135 foot lot widths. However, other Ag/RR or FR zoned lots in the area comply with lot width and 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(1);
- Any proposed structure on this lot requiring a building permit would need a minimum lot size and lot width variance;
- 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);
- The property drains to the northwest. The neighbor to the north has a pond on the property, which is where the stormwater currently drains;
- If the petitioner is able to work with a surveyor to flag the location of the home and septic, they could ensure the structures will be in the correct location;
- There is no FEMA floodplain on the site;
- Conclusion: It would not promote conditions detrimental to the use and enjoyment of other properties in the area.

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

Findings:

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

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

Findings:

- There is a hardship in that the property owner cannot do any development to this pre-existing nonconforming lot of record without first receiving a lot width and lot size variance, or seeking a rezone. The lot was in existence prior to the 1997 zoning ordinance and therefore was made nonconforming by the ordinance. A rezone to Suburban

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Residential is also not a viable option since the net acreage of the lot is less than 1 acre;

FINDINGS OF FACT: Front Yard Setback Requirement

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

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

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

Findings:

- Approval of the variance would allow the petitioner to add a single family dwelling 0 feet from the 35' right-of-way;
- The site is currently vacant;
- The area is not located within the floodplain or the Environmental Constraints Overlay area;
- Conclusion: It would not impair the stability of a natural or scenic area.

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

Findings:

- Due to the unique shape of the lot, the area considered to have the widest lot width is within the front setback. The petitioner is requesting a front setback variance to allow for more lot width at the proposed building line;
- N Old State Road 37 is a Major Collector maintained by the County Highway Department. There are currently no plans to improve N Old State Road 37;
- There is an existing easement within the right-of-way to REMC, though there are no current utilities by REMC. AT&T has a current utility line in the right-of-way but it will be relocated;
- The septic system will be on the west side of the property and therefore will not interfere with the proposed home location;
- Should there be a roadway project, the petition site includes 10 more feet of right-of-way than the Hindustan Heights subdivision;
- The average front setback of the nearby 8 structures is 51 feet from the centerline of N Old State Road 37. The closest setback is 25 feet and the furthest setback is 66 feet from the centerline of N Old State Road 37;
- Should a road improvement project or utility locate on the property, it would be within the 35' from centerline of N Old State Road 37;
- 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

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

Findings:

- See Findings under Section A(1) and A(2);
- The front setback is primarily dependent upon the road classification. All residential zones would have required a 35 foot front setback from right-of-way;
- The zoning of the properties to the south include Suburban Residential (SR). This lot cannot be rezoned to SR due to the minimum lot size being less than 1 acre. Even so, buildable area and front setback variances would still be necessary with the proposed development;
- The average front setback of the nearby 8 structures is 51 feet from the centerline of N Old State Road 37. The closest setback is 25 feet and the furthest setback is 66 feet from the centerline of N Old State Road 37;
- 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);
- Conclusion: Approval of the variance would satisfy the design standard sought to be varied.

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

Findings:

- See Findings under Section A(1);

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- The property drains to the northwest. The neighbor to the north has a pond on the property, which is where the stormwater currently drains;
- If the petitioner is able to work with a surveyor to flag the location of the home and septic, they could ensure the structures will be in the correct location;
- There is no FEMA floodplain on the site;
- Conclusion: It would not promote conditions detrimental to the use and enjoyment of other properties in the area.

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

Findings:

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

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

Findings:

- The property owner could propose a smaller home size and therefore eliminate the need to encroach within the front setback;
- There is no hardship in reducing the proposed size of the home to meet the required setbacks;

FINDINGS OF FACT: Buildable Area Requirement

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

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

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

Findings:

- Approval of the variance would allow the petitioner to encroach into the 15% slope area according to the GIS;
- The site is currently vacant;
- The area is not located within the floodplain or the Environmental Constraints Overlay area;
- Conclusion: It would not impair the stability of a natural or scenic area.

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

Findings:

- The home site is partially encroaching into the non-buildable area of the property;
- The owner is going to be constructing a walkout basement, which may reduce the overall amount of grading work in the area of steep slope;
- N Old State Road 37 is a Major Collector maintained by the County Highway Department. There are currently no plans to improve N Old State Road 37;
- There is an existing easement within the right-of-way to REMC, though there are no current utilities by REMC. AT&T has a current utility line in the right-of-way but it will be relocated;
- The septic system will be on the west side of the property and therefore will not interfere with the proposed home location;
- Should there be a roadway project, the petition site includes 10 more feet of right-of-way than the Hindustan Heights subdivision;
- Conclusion: It would not interfere with or make more dangerous, difficult, or costly, the use, installation, or maintenance of existing or planned transportation and utility facilities;

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

Findings:

- See Findings under Section A(1) and A(2);
- The buildable area requirement applies to all properties, regardless of their underlying zoning district;
- 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:

DRAFT

- See Findings under Section A(1);
- 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);
- The property drains to the northwest. The neighbor to the north has a pond on the property, which is where the stormwater currently drains;
- If the petitioner is able to work with a surveyor to flag the location of the home and septic, they could ensure the structures will be in the correct location;
- There is no FEMA floodplain on the site;
- Conclusion: It would not promote conditions detrimental to the use and enjoyment of other properties in the area.

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

Findings:

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

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

Findings:

- The property owner could propose a smaller home size and therefore eliminate the need to encroach into the non-buildable area of the property;
- There is no hardship in reducing the proposed size of the home to meet the buildable area requirement;

QUESTIONS FOR STAFF – 2002-VAR-09, 10, 11&12 - Reiman

Clements: I don't have any questions.

Guerrettaz: I have got a quick question. On page 46, Drew, just so I understand it. It says in like the fourth line, to build the home 35' feet from the centerline of North Old State Road 37. That is not in the right of way, correct? The right of way is, is it 35' feet or 70' feet from the existing centerline?

DRAFT

Myers: The existing right of way is dedicated to 35' feet.

Guerrettaz: Right, so if they put it at 35' feet it won't be in the right of way. It will be right at the right of way line, correct?

Myers: It will be on the right of way line. Correct.

Guerrettaz: I just wanted to clarify that. Then I think I have one more. When was this plat for Hindustan Heights when was this drawing done?

Myers: The survey that you saw was completed in 2006.

Guerrettaz: Ok and that right of way was probably from the Thoroughfare Plan at the time.

Myers: We are left to assume that.

Guerrettaz: Ok.

Wilson: Those lots in Hindustan were platted a long time ago. This and the cemetery were left out of those platted lots.

Clements: A lot had changed since then.

Myers: I will add some clarification as well that there was a discussion with Dave, the County Attorney, about whether or not this actual is a real lot of record and we came to the determination that yes, it has been here for quite some time and it is an individual lot of record.

Clements: Thank you.

Wilson: Just to clarify, it wasn't necessarily platted that way but it was a remnant that existed at the time the ordinance was approved. Is that correct, Dave?

Guerrettaz: There is s deed for it?

Myers: Yes. There is deed history.

Clements: Would the petitioner or the petitioner's representative like to speak on behalf of this case? Thank you. Please sign in and state your name.

PETITIONER/PETITIONER'S REPRESENTATIVE – 2002-VAR-09, 10, 11&12 – Reiman

Rieman: Amber Rieman.

Clements: Thank you and could you please raise your right hand? Do you swear to tell the truth, the whole truth and nothing but the truth?

DRAFT

Rieman: I do.

Clements: Thank you. Ms. Rieman.

Rieman: I bought this property off of my mom. She had bought it years ago. I just recently got married and we are wanting to build our new home. I am just new to all of this and going by the book. I do want to say thank you to Drew because he has took a lot of time with me in planning and getting all of this together and I did bring my general contractor with me as well, if you have any questions for him.

Clements: Wonderful. Do any members of the Board of Zoning Appeals have any questions for either Ms. Rieman or her contractor who is here as well? Seeing none. Back to discussion among us.

Guerrettaz: I have got another question on the right of way.

Clements: Is this for staff?

Guerrettaz: Yes, for staff.

SUPPORTERS – 2002-VAR-09, 10, 11&12 – Reiman: None

FURTHER SUPPORTERS – 2002-VAR-09, 10, 11&12 – Reiman: None

REMONSTRATORS - 2002-VAR-09, 10, 11&12 – Reiman: None

ADDITIONAL QUESTIONS FOR STAFF – 2002-VAR-09, 10, 11&12 – Reiman

Guerrettaz: So, looking at the drawing, if we have got 35' feet here and the Thoroughfare Plan probably required 70 but then north of this parcel is that 35? Is that a 35' foot right of way again?

Wilson: I think there is some confusion with the plat in that there was an electrical right of way.

Myers: In this survey we had a dedicated 35' foot right of way from centerline and there was some confusion with a utility company and REMC does have a utility easement within that right of way to be used. But, Bernie to your question whether or not that 35' foot right of way continues north, I am not sure. I would assume so.

Guerrettaz: The dimension on there is it appears to be 37.8' feet, so at that angle it is probably 35' feet. So, it looks like this, it looks to me like this stretch of property for whatever reason because they wanted to go through this process to plat it out was required to have that 70. But south of north of it, the right of way is 35' feet. That is what I read on this drawing. Ok, that was the question that I had and then as far as the building footprint.

Myers: Just to clarify on this, I don't know if I can zoom in a little bit. Here we go. So, you can kind of see the difference here in the right of way dedication from the platted Town of Hindustan

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and this petition site and according Chapter 804 of the Monroe County Zoning Ordinance different setbacks are in place dependent upon the road classification. The way that those setbacks are in store here there would be a 35' foot setback from the already 35' foot right of way for the petition site and I believe this same setback would be required for the Town of Hindustan plats of 35' feet because the road classification doesn't change. But that setback is measured from right of way. So, the right of way changes here between those Town of Hindustan plats and the petition site and that is why there is a discrepancy in distance and spacing from each house and the road in this area.

Guerrettaz: Again, I was just looking at the, this is kind of anomaly north and south is where the right of way is for the road. Could you put that green, you buffer image up there again?

Myers: Do you want me to zoom?

Guerrettaz: No, I don't need it. So, that is the, explain to me what that green is?

Myers: The petition site their platted right of way is a total of 70' feet, that is 35' feet on either side from centerline. Now, that right of way changes for these little platted lots of the Town of Hindustan. If that right of way hadn't changed that is what this graphic is showing. That green is that 70' foot wide that is 35' feet on either side of the centerline, all the way through if it wasn't an anomaly just for the petition site. If this were the case across the whole way here as indicated you would notice that some of these homes would also be right up along the right of way on the opposite side of the road. I am looking on the south one here. Those home would technically be in the front setback if that right of way was the same all the way through.

Guerrettaz: Ok, I was just kind of looking at the character to see if we were looking at change a bunch of stuff, physically, right.

Wilson: The houses on the same side of the road as this proposed house, I think comply with the setback requirement.

Myers: Yes.

Wilson: However, the ones on the opposite side of the road are closer and may be in the setback.

Guerrettaz: Right and I just kind of look at that as all being a little grouping because it was platted at the same time and people are going up and down the corridor they are not looking down the line but they are still getting a feel for how close houses are to where they are and the character just seems that the 70' foot or the 35' foot right of way here is an anomaly from what it was when we did the platted subdivision and I am glad to know that it's not proposed in the right of way. That was my hang up is how that happened and then on the slope, so it's just his back corner on the north corner that we are talking about potentially being the 15 percent.

Clements: In my opinion, that doesn't really, because the lot is so constrained it creates a practical difficulty for the owners.

DRAFT

Guerrettaz: I agree with that. That is kind of where I was going with it. Mr. Cummins brought up a good point that it is disturbance, you know, the general contractor is going to have to make sure there is erosion control and you know the things that are going to protect that slope. But just looking at that property and that comes back to the draw and the way it lands. You can see it with the slopes and then you see the draw where it's blank in the center. It seems to be to bring it up this way is probably a more practical location for the home site.

Clements: I think it's the best they can do given that lot.

Guerrettaz: I do too.

Myers: I will add some clarification too, that this is just eh best available data that we have. It is very possible that that red section there that is greater than 15 percent according to this data is actually not 15 percent. That is one of the reasons why Planning Staff originally requested the petitioner submit a site survey so that we could potentially eliminate that as a variance option but they didn't want to pursue the site land surveying for several reasons. So, we had to go ahead and apply for this variance based on our data.

Clements: Ok. Well, I think, are there any other questions or discussion among us? Pardon me? Oh, yes, sir, please sign in and state your name. Would you swear to tell the truth, the whole truth and nothing but the truth?

Baugh: I do

Clements: What is your name sir?

Baugh: Rick Baugh.

Clements: Mr. Baugh, thank you.

Baugh: I am an uncle to Amber. We have already got, or I have met with Randy Raines and we done got a septic permit and everything is approved. I do quite a bit of houses. I excavate and like Bernie was saying we will do erosion control on the bottom side and it will work.

Clements: And you will work with them if you find any irregularities and all of that?

Baugh: Yes. I work with the Building Department and stuff.

Guerrettaz: Randy flagged the location of the septic site, he has it marked where it needs to go?

Baugh: Right, yeah, I have done met, yes, and then Amber's mother bought the lot I think in 2008. Her father passed away and she didn't know what direction she was going to go and this come up for sale, so she bought the lot and she ended up going in another direction. So we had this vacant lot and so she ended up with.

Clements: It looks like a good proposal and the best that you can do with the shape of that lot.

DRAFT

Baugh: Yeah, I know it's tough. It's a tough little lot.

Clements: Thank you, sir. If there is a motion?

FURTHER QUESTIONS FOR STAFF – 2002-VAR-09, 10, 11&12 – Reiman

Guerrettaz: I can make a motion. Well, I think what we will do if its ok with the Board of Zoning Appeals if I do 9 and 10 at that same time and I will do 4 and 5 individual. Does that seem reasonable to staff to do it that way?

Myers: Can you just add some clarification to which ones you are grouping?

Guerrettaz: I was going to group 2002-VAR-09 and 2002-VAR-10 and group those together. Then separate 2002-VAR-11 and 2002-VAR-12.

Myers: Ok.

Guerrettaz: So, I am looking to do 3 motion.

Myers: Ok.

Guerrettaz: In the matter of 2002-VAR-09 and 2002-VAR-10, Reiman Minimum Lot Size Variance from Chapter 804 and Reiman Minimum Lot Width Variance from Chapter 804, respectively, I move that we approve the variances, based on the staff reports and the findings contained thereof.

Clements: Is there a second?

Hosea: **Second.**

Clements: Mr. Wilson, will you please call the roll?

Wilson: The vote is on petitions 2002-VAR-09 and 2002-VAR-10, Reiman Minimum Lot Variance request and the Reiman Minimum Lot Width request, respectively. The motion is to approve both variances based upon the findings with the conditions set forth in the staff report. Again, a vote of yes is a vote to approve both variances. William Hosea?

Hosea: Yes.

Wilson: Margaret Clements?

Clements: Yes.

Wilson: Bernie Guerrettaz?

Guerrettaz: Yes.

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Wilson: Vicky Sorensen?

Sorensen: Abstain.

Wilson: I will note your abstention. Both variances are approved by a 3 to 0 vote with one abstention.

The motion in cases 2002-VAR-09, Reiman Minimum Lot Size Variance from Chapter 804, 2002-VAR-10 Reiman, Minimum Lot Width Variance from Chapter 804, favor of approving the variances with conditions as set forth in the staff report, carried (3-0).

Guerrettaz: In the matter of 2002-VAR-11, Reiman Front Yard Setback Variance from Chapter 804, subject to staff report and findings, I move that we approve that variance, based on practical difficulties being met.

Clements: Is there a second?

Hosea: **Second.**

Clements: Mr. Wilson?

Wilson: Is this the Front Yard Variance?

Guerrettaz: Yes sir.

Wilson: The vote is on petition 2002-VAR-11, Reiman Front Yard Variance. The vote is to approve the variance based upon the findings with the amendment of the finding that there are practical difficulties utilizing the lot. A vote in favor is a vote to approve the variance with the amended findings. Margaret Clements?

Clements: Yes.

Wilson: Bernie Guerrettaz?

Guerrettaz: Yes.

Wilson: William Hosea?

Hosea: Yes.

Wilson: Vicky Sorensen?

Sorensen: Abstain.

DRAFT

Wilson: The variance is approved by a 3 to 0 vote with one abstention.

The motion in case 2002-VAR-11, Reiman Front Yard Setback Variance from Chapter 804, favor of approving the variance, with findings as amended with the motion, carried (3-0).

Guerrettaz: Ok, **in the matter of 2002-VAR-12, Reiman Buildable Area Variance from Chapter 804, subject to staff report and findings and I do believe that practical difficulties have been met, I move that we approve the variance.**

Clements: Is there a second?

Hosea: **Second.**

Clements: Mr. Wilson?

Wilson: The vote is on 2002-VAR-12, Reiman Buildable Area Variance. A vote in yes is a vote to approve the variance based upon the findings as amended to find particular difficulties in the utilization of the lot. Again, a vote of yes is a vote to approve the variance. Bernie Guerrettaz?

Guerrettaz: Yes.

Wilson: William Hosea?

Hosea: Yes.

Wilson: Margaret Clements?

Clements: Yes.

Wilson: Vicky Sorensen?

Sorensen: Abstain.

Wilson: I will note your abstention. The variance is approved 3 to 0 with one abstention.

The motion in case 2002-VAR-12, Reiman Buildable Area Variance from Chapter 804, favor of approving the variance, with findings as amended in the motion, carried (3-0).

Myers: Can I ask one clarifying note? With the first set of approvals did we capture the Conditional if staking out or flagging the septic location? Did we capture that condition?

DRAFT

Guerrettaz: I did not but I clarify the petitioner has flagged the location of the septic.

Wilson: There were conditions set forth in the report. I think I included that in the motion.

Guerrettaz: Right, I think I would have to agree with that since I brought that in, it wasn't my intention but since I brought the report into the motion I would say that is correct. That is a good clarification.

Myers: Ok, just wanted to clarify.

DRAFT

REPORTS:

Planning/Wilson: I have no report. I think Mr. Schilling has an extensive report as usual.

Legal/Schilling: I do have one thing to say that would interest Bernie and that is they have scheduled depositions for March 25th in the Geft case. We have continued to fight that. We have had a Federal Magistrate consider the arguments and he believes the depositions should go forward. But we are going to make one more stab at it to try to get him to reconsider. But we will let you know and I will be sending you copies of the subpoena.

Guerrettaz: Wonderful. I will say that I know for a fact that there are two dates in March that I do work. I committed, in the last two or three days that I committed that were open. March 25th is one of them. I haven't been told that that was the day that meeting was going to take place. It is a meeting at either 11 o'clock in the morning or 1 o'clock in the afternoon. So, what I will do is just advise you if that date is no longer available and then you work your magic and do what you need to do.

Clements: Ok, thank you. Motion to adjourn?

The meeting adjourned at 6:41 P.M.

Sign:

Attest:

Mary Beth Kacmarczyk, Chairman

Larry J. Wilson, Secretary

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