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**BOARD OF ZONING APPEALS
Virtual Meeting via ZOOM - Minutes
May 6, 2020 - 5:30 p.m.**

CALL TO ORDER

ROLL CALL

INTRODUCTION OF EVIDENCE

APPROVAL OF AGENDA

APPROVAL OF MINUTES

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

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

ABSENT: None

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

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

INTRODUCTION OF EVIDENCE:

Larry Wilson introduced the following items into evidence:

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

The motion to approve the introduction of evidence carried unanimously.

APPROVAL OF AGENDA:

Motion to approve the agenda, as amended, carried unanimously

APPROVAL OF MINUTES:

Motion if approve minutes from March 2020 meeting, carried unanimously.

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OLD BUSINESS:

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

NEW BUSINESS:

- 1. 2002-VAR-13** **Aten Minimum Lot Size Variance from Chapter 804**
2. 2002-VAR-14 **Aten Minimum Lot Width Variance from Chapter 804**
One (1) 1 +/- acre parcel in Salt Creek Township, Section 21
at 7245 E Pine Grove Rd.
Zoned FR. Contact: rpayne@co.monroe.in.us
- 3. 2002-VAR-15** **Eads Residential Storage Structure Variance from Chapter 802**
One (1) 5.0 +/- acre parcel in Clear Creek Township, Section 5
at 1222 W Rogers Rd.
Zoned AG/RR. Contact: acrecelius@co.monroe.in.us
- 4. 2002-VAR-16** **Byers DADU Cond. No. 53 Variance from Chapter 802**
5. 2002-VAR-17 **Byers DADU Cond. No. 55 Variance from Chapter 802**
One (1) 4.72 +/- acre parcel in Clear Creek Township, Section 19
at 8966 S Ketcham Rd.
Zoned AG/RR. Contact: acrecelius@co.monroe.in.us
- 6. 2003-VAR-18** **Ennis HBB Cond. No. 16 Variance from Chapter 802**
One (1) 9.87 +/- acre parcel in Richland Township, Section 15
at 6675 W Ratliff Rd.
Zoned AG/RR. Contact: acrecelius@co.monroe.in.us
- 7. 2003-VAR-19** **Holsapple Side Yard Setback Variance from Chapter 804**
Holsapple Minimum Lot Width Variance from Chapter 804
One (1) 3.53 +/- acre parcel in Clear Creek Township, Section 17
at 8023 S Old State Road 37.
Zoned AG/RR. Contact: dmyers@co.monroe.in.us
*****CONTINUED BY STAFF*****
- 8. 2003-VAR-20** **Carter Front Yard Setback Variance from Chapter 833**
One (1) 0.44 +/- acre parcel in Van Buren Township, Section 12
at 2728 S Leonard Springs Rd.
Zoned RS3.5. Contact: dmyers@co.monroe.in.us
- 9. 2003-VAR-21** **McMullen Use Variance from Chapter 802**
One (1) 0.40 +/- acre parcel in Benton Township, Section 35
at 8935 E Southshore Dr.
Zoned SR. Contact: rpayne@co.monroe.in.us

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- 10. 2003-VAR-22 Nelson Front Yard Setback Variance**
One (1) 0.16 +/- acre parcel in Perry Township, Section 6
at 2009 W Cory Dr.
Zoned RS(AIFA). Contact: rpayne@co.monroe.in.us
- 11. 2004-VAR-23 Van Buren Fire Dept. Min. Parking Variance from Chapter 806**
12. 2004-VAR-24 Van Buren Fire Dept. Streetscape Variance from Chapter 830
One (1) 1.78 +/- acre parcel in Van Buren Township, Section 32
at 9039 W Hinds RD, 6510 W Center ST, and 6223 S Burch RD.
Zoned Institutional (IP). Contact: dmyers@co.monroe.in.us

OLD BUSINESS

1. 1812-VAR-40

Patzner General Contractor Use Variance to Chapter 802

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

Zoned ER. Contact: jnester@co.monroe.in.us

BOARD ACTION: Kaczmarczyk introduced the petition.

STAFF ACTION:

Nester: This old business case was originally filed in December of 2018 and it is a request for a Use Variance for a General Contractor Use. It is zoned Estate Residential, so that use is currently not permitted on the property as General Contractor and the business name is Riverway Plumbing. I will just go through quickly this slide deck but the main updates are that the petitioner has purchased the site basically across the street. They have filed a site plan and we are working to approve that site plan so they can move over to the place across the street that is zoned Pre-Existing Business. Here we are in Perry Township. The site is zoned Estate Residential. The lot that they are purchasing is actually on the corner of Church and 37 right there, zoned Pre-Existing Business on that southwest side. In the Comprehensive Plan the area is Mixed Residential. The site conditions here is fairly flat. We are not talking about building any new buildings. It is actually an existing business happening without the proper permits. So, this is an enforcement case but it's coming before the BZA to ask for a Use Variance. The BZA has continued this a few times to see if the petitioner can move their business in adequate time without enforcement action. Here are some site photos. The bottom photo is actually looking north at the neighboring property but you are right off of Old State Road 37. The property has a rental home on it. The actual owner of Riverway does not live on the site. There is a pole barn in the back where they do have some offices and where they store some buildings. This is a new aerial as of April 2020. You can see kind of what the site looks like as a business and the surrounding uses are residential and this area is zoned residential. So, typically if someone has a home based business, they don't have more than 2 offsite employees and they store their vehicles in a hidden location. As you can tell there is about 16 employees and there is a lot of things happening out in the open without proper screening. This is a recommendation from us to deny the Use Variance. A Use Variance is typically very hard to get because you have to prove that there are no other valid uses for the property and actually the primary use which its tax for is to be a residential use which they are renting long-term. I will take any questions.

RECOMMENDED MOTION

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

FINDINGS OF FACT: Use Variance

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

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

Findings:

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

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

Findings:

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

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

Findings:

- The use of "General Contractor" is not a permitted use in the Estate Residential (ER) zoning district, thus requiring the variance to be filed;
- The Estate Residential (ER) zone permits: Historic Adaptive Reuse; Accessory Apartments; Accessory Livestock; Guest House; Historic Adaptive Reuse; Home Based Business; Home Occupation; Residential Storage Structure; Single Family Dwelling; Temporary Dwelling; Two Family Dwelling; Cemetery; Governmental Facility; Religious Facilities; Telephone and Telegraph Services; Utility Service Facility; Water Treatment Facility; Bed and Breakfast; Real Estate Sales office Or Model; Park and Recreational Services; Private Recreational Facility; or Construction Trailer;
- The site has a single family dwelling, detached garage, and residential storage structure. The 2400 square foot residential storage structure is used as residential storage, office space, and commercial storage;
- There is no substantial evidence the property cannot be utilized under one of the permitted uses listed in the Estate Residential (ER) zoning district, including the permitted use as a long term rental property;

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- Conclusion: The need for the variance does not arise from some condition peculiar to the property involved.

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

Findings:

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

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

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

Findings:

- See Findings under (A);
- The Urbanizing Area Plan designates the subject site as Mixed Residential, which is described previously in this report. The neighboring properties are also zoned Mixed Residential in the MCUA plan. Though this area calls for commercial activity, the MCUA plan specifies neighborhood amenities and not particularly general contractor uses that are typically found in the industrial zones;
- The property does not have evident environmental constraints;
- The proposed use and its “Medium” intensity classification in this area is not consistent with the Comprehensive Plan’s designation;
- The structure being used as an office was permitted under a residential accessory structure. No new development is being proposed;
- Conclusion: The approval does interfere substantially with the Comprehensive Plan.

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

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QUESTIONS FOR STAFF – 1812-VAR-40 – Patzner

Kaczmarczyk: Any questions of staff?

Sorensen: I have a question. This is Vicky. So, you are saying he bought the property across the street?

Nester Jelen: Yes.

Sorensen: So, there are no buildings across the street, right?

Nester Jelen: Correct.

Sorensen: So, he would have to build something, so right now he is asking us to still give him a variance.

Nester Jelen: Yes, they have continued the case for 6 months at a time and this will be the third continuance if it's past as a continuance, which is basically you don't make a decision but you ask us to not enforce on the property. But if you grant the Use Variance that goes with the land, so then that land will be able to operate as a General Contractor indefinitely.

Kaczmarczyk: So, it would be best to continue again, perhaps instead of granting it because that way it doesn't go with the land it just lets him do whatever he needs to do to get the other building? Is that correct?

Nester Jelen: It is up to the Board of Zoning Appeals members. There are 3 options here; you can deny, you can continue or you can approve. So, I think the petitioner asked to be on the call tonight but I am not sure that he was able to make it. I don't know if there is an updated timeline from him but I will tell you from our office we have reviewed the site plan and we are getting close to a point where we can approve it. We are looking at a couple of months before there are any buildings or occupancy at the site to move over to.

Clements: I have a question, Jackie.

Nester Jelen: Go ahead Margaret.

Clements: Have there been any complaints about Mr. Patzner's operations there?

Nester Jelen: No.

Clements: Ok, thank you.

Hosea: I have a question.

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Nester Jelen: That is who?

Hosea: That is me, William.

Nester Jelen: William, sorry.

Hosea: You said you reviewed the site plan and I didn't catch what you said after that, something about approving?

Nester Jelen: Yes. The business that he wants to move, Riverway Plumbing, across the street, that site that he is choosing to locate it's a permitted use, the General Contractor. He is able to submit a site plan for staff review and then once staff reviews it and approves it we will issue Building Permits and then he is able to start construction.

Hosea: And this business will move across the street to the new site.

Nester Jelen: Yes.

Hosea: Do you have any idea how long that is going to be?

Nester Jelen: Well, like I mentioned this was filed in December of 2018. He had thought it would be December of 2019 that he would be moved so, at this point I am not sure of the current status of things. There was a kink to his plans but all things considered once the site plan is approved if they are moving quickly it can be probably 4 months until, 4 to 5 months, depending on how much he is building but it's not a huge site. It's less than an acre. So, we do anticipate that by late fall he should be finished.

Hosea: Ok, thank you.

Guerrettaz: Jackie, this may or may not be relevant but is this the same, are we still working with the same petitioner that was doing the site down at Old 37 and Clear Creek, is it Clear Creek Road or Church Road? Is that the site that he is working on?

Nester Jelen: Yes.

Guerrettaz: Ok, it is the site down that just across the from car lot down there by...

Nester Jelen: It used to be a mobile home park.

Guerrettaz: Right, ok and he is actively working on that site. How many continuances can he have before, can we continue infinite or is there a limit to the amount of continuances this Board can provide?

Nester Jelen: That is a good question. I know that if the petitioner requests the continuance it is limited to 3. Dave or Larry do you want to weigh in? Is there a limit to the BZA's threshold on granting continuances?

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Schilling: Not that I am aware of.

Nester Jelen: Ok.

Guerrettaz: The reason why I am asking that question is, is there a difference between and I am not trying to get in the weeds here, is there a difference between continuance or table?

Nester Jelen: Table would go to the next meeting. Continuance you could set to a meeting in the near future.

So, if we make a motion could a motion be that we could give staff flexibility in determining the next reasonable meeting for him to present his petition to give him? If we are going to give him the opportunity to get his site plan approved which I think that's what I am hearing from everybody and seeing what happening there we might as well use your guidance as staff to let us know when it would be more beneficial to tie up an agenda with an approval that was closer to his site plan approval. We can put a maximum on that so the petitioner just isn't utilizing the goodwill of the Planning staff to review the site plan. Do you see where I am going with this or not?

Nester Jelen: I do, yes. I think the issue with that, Dave looks like he might want to weigh in, is that we have to announce the next meeting date for it to be continued to at this meeting. Is that right Dave?

Schilling: If you continue it generally then you will have to re-advertise and bear that expense.

Creceilius: Can I interrupt?

Nester Jelen: Anne is working on the site plan.

Creceilius: I approved the site plan today and issued a Grading Permit. I will go into the office hopefully tomorrow and get the building plans that were submitted and start reviewing the Building Permit. So, the site plan was approved as of today.

Guerrettaz: Ok, if we approve this, if we make a motion for a continuance, he is going to continue to work out of the existing noncompliant enforcement property and then we could give him a few months to prove that he is kicking off his building construction and moving in that right direction, investing in that move and then we could hear it at that meeting and if he has got his site built at that point then we can just take it off of the whole agenda and he moves to the other site or we can continue it at that time to allow him to finish up his construction. Am I missing something or is that correct?

Nester Jelen: You are correct.

Clements: Bernie and colleagues on the Plan Commission, given these uncertain times and all of the demands and things just aren't moving at a real normal speed, I would argue for the maximum continuance if its 6 months just because this gentleman has come before us so many times and he is trying to make a go of it. He has a business already and we don't want to create any extra

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hardship him since neighbors are not complaining I would argue for a 6 month continuance.
Guerrettaz: I can make a, oh, excuse me.

Kaczmarczyk: Should I ask if there is anyone to speak on behalf of the petition? Anybody to speak on behalf of the petition? Seeing none. Anybody here to speak against the petition? Seeing none.
Bernie, make a motion.

PETITIONER/PETITIONER'S REPRESENTATIVE – 1812-VAR-40 – Patzner: None

SUPPORTERS – 1812-VAR-40 – Patzner: None

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

REMONSTRATORS - 1812-VAR-40 – Patzner: None

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

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

Guerrettaz: **In the matter of case number 1812-VAR-40, Patzner General Contractor Use to Chapter 802 at 5605 South Old State Road 37, I move that we continue this petition to October...**

Kaczmarczyk: It would be November, wouldn't it?

Guerrettaz: I didn't count 6 months, I am just saying November is fine. **November 2020 Board of Zoning Appeals Hearing, based on the recommendations and the findings in the staff report.**

Kaczmarczyk: Larry, could you please call the roll?

Hosea: Don't we need a second?

Clements: I **seconded** it.

Hosea: Ok

Nester Jelen: You are on mute, Larry.

Wilson: Ok, let me try it again, with sound. The vote is on petition 1812-VAR-40, Patzner General Contractor Use Variance to Chapter 802. The motion is to continue this matter to the November BZA Meeting. A vote in favor is a vote to continue. Bernie Guerrettaz?

Guerrettaz: Yes.

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Wilson: William Hosea?

Hosea: Yes.

Wilson: Mary Beth Kaczmarczyk?

Kaczmarczyk: Yes.

Wilson: Vicky Sorensen?

Sorensen: Yes.

Wilson: Margaret Clements?

Clements: Yes.

Wilson: Motion to continue is granted 5 to 0.

The motion in case 1812-VAR-40, Patzner General Contractor Use Variance to Chapter 802, to continue the matter to the November 2020 BZA Meeting, carried unanimously (5-0).

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NEW BUSINESS

1. 2002-VAR-13

Aten Minimum Lot Size Variance from Chapter 804

2. 2002-VAR-14

Aten Minimum Lot Width Variance from Chapter 804

One (1) 1 +/- acre parcel in Salt Creek Township, Section 21
at 7245 E Pine Grove Rd.

Zoned FR. Contact: rpayne@co.monroe.in.us

BOARD ACTION: Kaczmarczyk introduced the petition.

STAFF ACTION:

Payne: Good evening, everyone. This is a petitioner request for 2 design standards variances from the Minimum Lot Size and the Minimum Lot Width of Chapter 804. The petitioner's intent is to build a modular home with an attached garage so that the petitioner's parents can live in the home. Initially when the petitioners bought the property there was a home already on the lot but it was inhabitable due to just years of neglect. This new home that they are proposing will meet all new design standards and setbacks and will be in the buildable area. Again, this is a breakdown of the requests. One request for a Lot Size Variance, our ordinance requires 5 acres and the lot is 1 acre. The lot width requirement is 200 feet and currently the existing lot width is 140 feet. Next slide please.

Nester Jelen: Thanks Rebecca. We have got 2 new people and I just want to check in with those folks. New User can you hear me?

New User: Yes.

Nester Jelen: Which petition are you here for?

New User: Getting a variance on a Building Permit for a 2,400' square foot pole barn.

Nester Jelen: Ok and what was your name sir?

Eads: Eads

Nester Jelen: Ok, thank you. And the Iphone User?

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Dayton: Just to clarify that wasn't New User, it was phone number 812-606-6623.

Eads: That was me. I am having a hard time on the computer so I am just listening on the phone.

Nester Jelen: Thank you. New User?

Dayton: New User does not appear to have a microphone.

Nester Jelen: Ok. Iphone with the starting number of 317?

That is my mom. She is an owner on the Lake Lemon property.

Nester Jelen: Ok, thank you. Rebecca, go ahead.

Payne: Next slide, Jackie. The petition site is located at 7245 Pine Grove Road in Salt Creek Township. Its current zoning is Forest Reserve. The petition site is located in an Environmental Constraints Overlay Area 1. The surrounding properties are zoned FR and the site is currently vacant. It's surrounding uses are residential. There is some slope on this property, however the petitioner is proposing to put the home outside of the slope. So, he is meeting all slope requirements with his proposal and then regarding site conditions, the site has frontage and access onto East Pine Grove Road, which is classified as a local road. There aren't any karst features visible on the lot. Again, it is in Area 1 of the Environmental Constraints Overlay, however all new construction will be under the 12 percent slope threshold and the 15 percent slope threshold. FEMA Floodplain is not located on the site and drainage is primarily to the east. The Comprehensive Plan has this as Rural Reserve. Here to get a sense of what the site looks like existing are a few photos. The upper left photo is showing against the road way and then the larger picture there on the right is the snapshot looking north on through the property and you can sort of see already where the home has been staked out in that bottom left photo. Again, all other design standards are met so they have met the first setback as well. Again so more photos. The picture on the right this is looking north. You can see the slope that is there on the right hand side but again, like I mentioned, they are not going to be building in the slope. On the left is the petitioner's site plan and on the right is the petitioner letter. Just to reiterate their intention here is to build a house for their parents. The property just to the west of the petition site is owned by one son and the property to the east of the petition site is owned by another son. The recommended motion, staff does recommend approval of the design standards variance to Chapter 804 for the Minimum Lot Size as well as approve of the design standards variance to Chapter 804 for the Minimum Lot Width, based on findings of fact. Are there any questions?

RECOMMENDED MOTION:

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

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

FINDINGS OF FACT: Minimum Lot Size Chapter 804

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

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a design standards variance, the Board must find that:

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

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

Findings:

- Approval of the variance would allow for the construction of a 44' x 30' modular home with a 28' x 24' attached garage;
- There are no designated natural or scenic areas nearby;
- The petitioner's site is located in the Environmental Constraints Overlay Area 1 but the proposed house and garage are not located on slopes and therefore meets both the 12% and 15% slope threshold;
- **Conclusion:** Approval of the variance would not impair the stability of a natural or scenic area.

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

Findings:

- See Findings A(1);
- E Pine Grove Road is a local road that runs along the southern property line;
- Adding a residential addition will have no foreseeable impact on utilities;
- The site will utilize a septic system;
- **Conclusion:** Approval of the variance would not interfere with or make more dangerous, difficult, or costly, the use, installation, or maintenance of existing or planned transportation and utility facilities.

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

Findings:

- See Findings A(1) and A(2);
- The property is zoned Forest Reserve (FR);
- The required minimum lot size is 5.0 acres;
- The lot size measures approximately 1.0 acres;
- The use will be residential with surrounding uses residential;
- The Comprehensive Plan designates this area as Rural Reserve;
- This is a preexisting lot that has not changed dimensions since before the current

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ordinance;

- The proposed residential structure will meet all required setbacks;
- **Conclusion:** Approval of the variance would not alter the character of the property in a manner that substantially departs from the characteristics sought to be achieved and maintained with the relevant zoning district.

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

Findings:

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

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

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

Findings:

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

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

Findings:

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

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

Findings:

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

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

Findings:

- Practical difficulties have been demonstrated in that the lot exists in the current configuration, which does not meet the minimum lot size for the zoning district (FR);
- There was a home on the lot; it was preexisting at the time of the zoning ordinance adoption in 1997, which required the minimum lot size of 5.0 acres;
- Petitioner has applied for two variances, which is the minimum necessary in order to do further development on this preexisting nonconforming lot.

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 construction of a 44'x30' home with a 28'x 24' attached garage;
- There are no designated natural or scenic areas nearby;
- The petitioner's site is located in the Environmental Constraints Overlay Area 1 but the proposed house and garage are not located on slopes and therefore meet both the 12% and 15% slope threshold;
- **Conclusion:** Approval of the variance would not impair the stability of a natural or scenic area.

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

Findings:

- See Findings A(1);
- E Pine Grove Road is a local road that runs along the southern property line;
- Adding a residential structure with garage will have no foreseeable impact on utilities;
- The site will utilize a septic system;
- **Conclusion:** Approval of the variance would not interfere with or make more dangerous, difficult, or costly, the use, installation, or maintenance of existing or planned

transportation and utility facilities.

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

Findings:

- See Findings A(1) and A(2);
- The property is zoned Forest Reserve (FR);
- The required minimum lot width is 200 feet;
- The lot width measures approximately 140' at building line;
- The use will be residential with surrounding uses residential;
- The petitioner's sons live on either side of the site;
- The Comprehensive Plan designates this area as Rural Residential;
- This is a preexisting lot that has not changed dimensions since before the current zoning ordinance;
- **Conclusion:** Approval of the variance would not alter the character of the property in a manner that substantially departs from the characteristics sought to be achieved and maintained with the relevant zoning district.

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

Findings:

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

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

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

Findings:

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

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

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Findings:

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

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

Findings:

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

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

Findings:

- Practical difficulties have been demonstrated in that the lot exists in the current configuration, which does not meet the minimum lot width for the zoning district (FR);
- The lot was preexisting at the time of the zoning ordinance adoption in 1997, which required the minimum lot width of 200 feet at building line;
- The configuration of the lot is such that the residential addition would meet neither the minimum lot size nor minimum lot width requirements no matter the design or location.

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

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

QUESTIONS FOR STAFF – 2002-VAR-13 & 2002-VAR-14 – Aten

Kaczmarczyk: Are there any questions for staff? I will entertain, I am sorry, is there anybody here to speak on behalf of the petition? Is the petitioner here?

Nester Jelen: Yes, Mary Beth, Russ Aten would like to speak.

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**PETITIONER/PETITIONER'S REPRESENTATIVE –
2002-VAR-13 & 2002-VAR-14 – Aten**

Kaczmarczyk: Russ, I need you to state your name.

Aten: Russell Aten.

Kaczmarczyk: Ok, can you raise your right hand and let me swear you in please? Do you swear to the truth and nothing but the truth?

Aten: I do.

Kaczmarczyk: Thank you sir. You may proceed.

Aten: I just wanted to add, if it makes a difference, we do have a septic permit upgrade the property with a 1,000 gallon tank and a presby system. What we tore down was a 4 bedroom home and what we are building is a 2 bedroom home and like Rebecca mentioned we live on one side and my brother lives on the other.

Kaczmarczyk: So, you wont be having any neighbors complaining about that then.

Aten: No, we all get along.

Kaczmarczyk: Any questions for the petitioner? Ok, thank you sir. Does anyone else want to speak on behalf of the petition?

SUPPORTERS –2002-VAR-13 & 2002-VAR-14 – Aten

Aten: I would like to, if I could.

Kaczmarczyk: Sure, would you state your name please?

Aten: Roy Aten.

Kaczmarczyk: Do you swear to tell the truth?

Aten: I do.

Kaczmarczyk: Thank you sir. Go ahead.

Aten: I am the brother to the east and I just wanted to say that any kind of impacts off his property would be on me more than any other and I just wanted to come out in support for the petitioners request for a variance on both the items. I think the items are important but as for the frontage, I wanted to point out that between these properties on this side of the road there is about 2,000' feet of road frontage and even tough this will be greater than 200' feet it is still no other buildable lots within that 2,000' square feet. So, we are not trying to push extra lots into this area. On the other

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item about the minimum lot standards, my property actually borders to the north and to the east of this and there are no other buildable lots in that area also. Everything else is just slope and preserved woods and that is how it is going to remain forever. So, I just wanted to voice my support the petition and to grant the variance. Thank you.

Kaczmarczyk: Any questions for Roy? No questions for Roy. Thank you. Anyone else want to speak on behalf of the petition? Seeing none. Anyone wish to speak against the petition? Seeing none. Any other questions? I will entertain a motion now.

FURTHER SUPPORTERS – 2002-VAR-13 & 2002-VAR-14 – Aten: None

REMONSTRATORS - 2002-VAR-13 & 2002-VAR-14 – Aten: None

ADDITIONAL QUESTIONS FOR STAFF – 2002-VAR-13 & 2002-VAR-14 – Aten: None

FURTHER QUESTIONS FOR STAFF – 2002-VAR-13 & 2002-VAR-14 – Aten

Guerrettaz: I can do that. **In case number 2002-VAR-13, Aten Minimum Lot Size Variance from Chapter 804 and 2002-VAR-14, Aten Minimum Width Variance from Chapter 804, at 7245 East Pine Grove Road, I move that we approve the variances based on staff's findings in the report.**

Hosea: I will **second**.

Kaczmarczyk: Please call the roll, Larry.

Wilson: The vote is on petitions 2002-VAR-13 and 2002-VAR-14, Aten Minimum Lot Size Variance from Chapter 804 and the Aten Minimum Lot Width Variance from Chapter 804 respectively. The variances are for a 1 acre parcel located at 7245 East Pine Grove Road. A vote in favor is a vote to grants both variances. William Hosea?

Hosea: Yes.

Wilson: Mary Beth Kaczmarczyk?

Kaczmarczyk: Yes.

Wilson: Vicky Sorensen?

Sorensen: Yes.

Wilson: Margaret Clements?

Clements: Yes.

Wilson: Bernie Guerrettaz?

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Guerrettaz: Yes.

Wilson: Both variances are granted.

The motion in cases 2002-VAR-13, Aten Minimum Lot Size Variance from Chapter 804 and 2002-VAR-14, Aten Minimum Lot Width Variance from Chapter 804, in favor of approving the variances, carried unanimously (5-0).

NEW BUSINESS

3. 2002-VAR-15 Eads Residential Storage Structure Variance from Chapter 802
One (1) 5.0 +/- acre parcel in Clear Creek Township, Section 5
at 1222 W Rogers Rd.
Zoned AG/RR. Contact: acrecelius@co.monroe.in.us

BOARD ACTION: Kaczmarczyk introduced the petition.

STAFF ACTION:

Crececius: This is a design standards variance from a Residential Storage Structure restriction from Chapter 802. The location is at address 1222 West Rogers Road. It is located in Clear Creek Township. It is 5 acres and it is currently zoned Agricultural/Rural Reserve. It is unplatted. The petition site is currently developed with a 600' square foot barn built in 1985 that will remain on the property. The ordinance that is being requested a variance from is 802-5. The Residential Storage Structure restriction is for a structure that is used for private, non-commercial storage that has a size limitation of 1,200' square feet if there is not a primary use on the property. The property is undeveloped. It only has a barn on it that has been there is 1985. So, it is not a primary use. So, the site conditions; it has access to water but it does not currently have a septic system and there is some slope on the property but not much. It meets the buildable area. The petitioner is requesting this variance in order to construct a 2,400' square foot pole barn. It is the petitioner's intention to build this pole barn in addition to the existing pole barn to storage his equipment and his other items in preparation for building a home there in the future years. Next slide please. The property is zoned for the Comprehensive Plan. It is Rural Residential. So, the character from the Comprehensive Plan is not going to change much. This is the petitioner's site plan that he submitted. The existing pole barn can be seen from the right image. The driveway comes from the south to the north and the existing pole barn is right there. It is 600' square feet and to the west he would like to build the new addition there. I did receive an email after I submitted the packet in which I recommended denial of the variance. I did reach out and get more information just confirming that he is wanting to build a home there in the future and that he understands that the

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property would need to have a primary use. So, the next slide please. The top left corner photo is coming up the driveway and you can see the existing barn. The top right is a closer view of the existing barn and a temporary port-a-potty. The bottom left is too small to see but he has staked out where he would like to see the new proposed pole barn and the bottom right is looking back at South Rogers Road looking down the driveway. Because I received this email a little late, the packet and the report still said to deny the standard variance from the requirements of Chapter 802. The petitioner did submit an email saying that he was planning on building a primary residence there on the property in the future. Any questions?

RECOMMENDED MOTION:

Deny the design standard variance from the requirements of Chapter 802 of the Monroe County Zoning Ordinance based on the findings of fact.

FINDINGS OF FACT: Minimum Lot Size Standard

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

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

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

Findings:

- Approval of the variance would allow the petitioner to develop a 5+/-acre lot with a 40x60' pole barn;
- The site has a 600 sf barn built in 1985 per property report card;
- There are no designated scenic areas adjacent to the petition site;
- There is no evidence that the pole barn would obstruct a natural or scenic view;
- Conclusion: It would not impair the stability of a natural or scenic area.

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

Findings:

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

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

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Findings:

- See findings under A(1) and A(2);
- The maximum allowable square footage of the pole barn is 1750 sf since there is not an existing primary structure on the property. The petitioner would be over the maximum amount by 1,250 sf;
- Once a primary structure is established on the property, the owner would be permitted up to 15,000 sf of maximum building coverage;
- The proposal would meet all other design standards;
- Conclusion: The character of the property included in the variance would not be altered in a manner that substantially departs from the characteristics sought to be achieved and maintained within the relevant zoning district.

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

Findings:

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

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

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

Findings:

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

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

Findings:

- See findings under A (1);
- There is no FEMA floodplain on site;
- Drainage from the existing structure run towards the west to existing large ravines.
- Drainage from the proposed pole barn is not expected to interfere with this pattern;
- Conclusion: It **would not** promote conditions (on-site or off-site) detrimental to the use and enjoyment of other properties in the area.

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

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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 petitioner states this is a step towards developing the property with a Single Family Home.
- The existing barn appears to be in degraded shape and is 1,800 sf smaller than the requested structure;
- The strict application of the ordinance would not prevent the petitioner from repairing the existing barn or constructing a new barn that does not exceed the maximum 1750 sf standard;
- Conclusion: There are **not** practical difficulties in the use of the property;

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

QUESTIONS FOR STAFF – 2002-VAR-15 - Eads

Kaczmarczyk: Does anyone have any questions?

Sorensen: I do have a question. In reading everything, this is Vicky, is there a limit of how many buildings can be built on a property and the number of square feet total of all of the buildings combined?

Creceilius: No, it's a combination of both buildings that would be exceeding the total of 1, 750' square feet. That includes the existing building there.

Sorensen: Ok, thank you.

Hosea: I have a question. Anne, you kept emphasizing that you received an email from the petitioner. Did that change your recommendation?

Creceilius: If I would have had time I would have changed it to approval. I would have liked to have had more time but I did reach out for more information at the last moment. It was a little late when I realized that I really didn't have enough substance from him saying, even though I knew

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that he has talked about building a primary residence, I really just didn't have that in writing. So, it was just too late to include it in the packet.

Hosea: Thank you.

Kaczmarczyk: Any further questions for staff? Ok, is the petitioner here?

PETITIONER/PETITIONER'S REPRESENTATIVE – 2002-VAR-15 – Eads

Eads: Yes, I am here. I can see you but I don't think you can see me.

Kaczmarczyk: Did you turn on your video?

Eads: I am not that computer savvy but I can see you guys and I got you on the phone and that is good enough for me. What is your question?

Kaczmarczyk: Ok, do you wish to speak?

Eads: Pardon, it skipped out.

Kaczmarczyk: Do you wish to speak?

Eads: Yes, thank you.

Kaczmarczyk: Ok, let me swear you in. Can you please raise your right hand?

Eads: I got.

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

Eads: Yes, I do.

Kaczmarczyk: Alright, thank you sir. State your name.

Eads: James Roy Eads. The reason why I am wanting the size of building is the house I recently sold a little over a year ago I had 2,450' square feet of garage space and storage there. Most of my stuff, I have gotten rid of a lot of stuff but most of my stuff is shop related like woodworking tools and stuff and it's all packed in a 20 or a 40 foot container out in the hot sun and it's not good to have tools like that in a container. That is why I want to build a building and get my tools over there and once I get them in the shop or the pole barn then I can use that stuff to build the other house, a small house that I am retiring in. So, that is the reason that I want that size of building. Also, I had garage space at the other place also. I have 3 vehicles and I have got one classic car that I want to restore. So, that is the other reason for such a big building.

Kaczmarczyk: Anyone have any questions for the petitioner? No questions for the petitioner? Ok, thank you sir.

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Eads: Thank you.

Kaczmarczyk: Is there anyone else here who would like to speak on behalf of the petition? I'm seeing none. Anyone here wish to speak against the petition? It is kind of hard to judge whether anyone is wanting to speak or not.

Nester Jelen: I am checking for you Mary Beth. You are good.

Kaczmarczyk: Ok. I guess we can entertain a motion.

SUPPORTERS – 2002-VAR-15 – Eads: None

FURTHER SUPPORTERS – 2002-VAR-15 – Eads: None

REMONSTRATORS - 2002-VAR-15 – Eads: None

ADDITIONAL QUESTIONS FOR STAFF – 2002-VAR-15 – Eads: None

FURTHER QUESTIONS FOR STAFF – 2002-VAR-15 – Eads

Guerrettaz: In case number 2002-VAR-15, design standards variance for a Residential Storage Structure to Chapter 802, on 1222 West Rogers Road, I move that we approve the variance, based upon staff's report and practical difficulties.

Clements: I **second** the motion.

Kaczmarczyk: Larry, could you please call the roll?

Wilson: Yes. The vote is on petition number 2002-VAR-15, Eads Residential Storage Structure variance from the maximum square footage requirement under Chapter 802. The property is located at 1222 West Rogers Road. A yes vote is a vote to approve development standards variance. Mary Beth Kaczmarczyk?

Kaczmarczyk: Yes.

Wilson: Vicky Sorensen?

Sorensen: Yes.

Wilson: Margaret Clements?

Clements: Yes.

Wilson: Bernie Guerrettaz?

Guerrettaz: Yes.

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Wilson: William Hosea?

Hosea: Yes.

Wilson: The variance is granted 5 to 0.

The motion in case 2002-VAR-15, Eads Residential Storage Structure Variance from Chapter 802, favor of approving the variance, carried unanimously (5-0).

Wilson: One other thing, in regard to Zoom, there should be in your upper right hand corner the ability to flag or waiver your hand.

Nester Jelen: If someone wants to speak and they go to manage participants they will be able to get their hand raised. But you can also physically raise your hand or chat us. Those are both functions to speak.

Wilson: But if there are several speakers in regard to a petition, you might want to raise your hand at the beginning of that testimony.

Nester Jelen: I will mention for folks that are just joining us, Neil Patzner, your case was actually first. It was continued until November 2020, so we will be following up with you, Neil.

Patzner: Thank you.

Kaczmarczyk: It was a pleasure to see you, Neil.

Nester Jelen: Sorry, one other quick note, sorry before we get started. Larry reminded me that if anyone who is listening on CATSTV and they want to make a comment on one of the petitions they can email us at planningoffice@co.monroe.in.us. I will also put that in the chat. Go ahead, Anne.

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NEW BUSINESS

4. 2002-VAR-16

Byers DADU Cond. No. 53 Variance from Chapter 802

5. 2002-VAR-17

Byers DADU Cond. No. 55 Variance from Chapter 802

One (1) 4.72 +/- acre parcel in Clear Creek Township, Section 19 at 8966 S Ketcham Rd.

Zoned AG/RR. Contact: acrecelius@co.monroe.in.us

BOARD ACTION: Kaczmarczyk introduced the petition.

STAFF ACTION:

Crecelius: Thank you. This is 2 design standard variances from Chapter 802. They are both from Condition No. 55, which is relevant to the accessory dwelling unit. In this case it is for a Detached Accessory Dwelling Unit. The petition site is located in Clear Creek Township. It is at address 8966 South Ketcham Road. It is a 4.72 acre lot. The petitioner is requesting 2 design standards variances. They are both from Condition No. 55 but it has multiple points underneath it. The first one is that in order to have a Detached Accessory Dwelling Unit the owner must have a minimum lot size of 5 acres and second point is the Detached Accessory Dwelling Unit is limited to 1,000' square feet of residential or livable space. Currently the petition site contains a 1,274' square foot home and a 144' square foot shed built on the property in 1995. The variances are requested in order to permit the DADU, Detached Accessory Dwelling Unit, so that the petitioner can build a new single family residence home. So, permit the existing home as the Accessory Dwelling Unit and build a new primary residence. The petition site is currently zoned Agricultural/Rural Reserve and the Comprehensive Plan states it as being MUCA Phase 1, I am sorry, not MCUA, its Rural Residential, no Farm and Forest. There we go. The site has a little bit of slope. There is a pond

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toward the east side of the property near South Ketcham Road. Most of the drainage in that area drains toward that pond. There is a fair amount of buildable area toward the west side as you can see in the bottom right photo. Let's see, next photo please. The top left photo is a pictometry photo and that is going to show this home was a part of just recently a 2-lot Administrative Subdivision called the Barger Type "E" Subdivision where they adjusted the lot lines. In the top left photo the home that we are discussing that would be the Detached Accessory Dwelling Unit is the smaller white house toward the middle of the photo and the other lot, the second lots home is toward the top left of the photo. You can see the pond kind of draining toward the road which is highlighted in pink. The top left photo is the Detached Accessory Dwelling Unit as it currently sits. The bottom left photo is actually even though there is a fence that is owned by, well, it will hopefully be owned by the petitioner, that area even though there is a fence that field that we see just before the barn is a part of Lot 1. To the right is the most recent plat of the Type "E". We can see that there was some transfer area because the neighbor to the south they are just landscaping, gardening kind of encroached so they decided to adjust that lot line rather than having an "I" shaped, they decided to just split it in half. Before this lot line shift the parcel that the petitioner is interested in was 5 acres exactly. With the Type "E" they were required to dedicate right of way which did drop it down from 5 acres to 4.72 acres. This is the petitioners plan for their primary residence. It is a fairly small home. They are looking to build a primary residence with an attached garage, an attached covered porch and a small studio in the back. The petitioner is seeking to do this because, and I know that they are on this call and he can speak more to this later, but he is seeking, the intentions of the variances are to allow son-in-law and daughter to in the Detached Accessory Dwelling Unit and he can live in the primary residence. The son-in-law does have a disability that would, with being on the same property would allow the whole family to stay together and have more of a family environment. Is there another slide, Jackie? This is just going over that this was Barger Type "E" that did adjust those lot lines from this lot changing from 5 acres to 4.72 that was pending from before the petitioner was interested in the lot. It was pending since October of 2019. I reviewed the Administrative Subdivision initially and it was kind of waiting for a while, waiting on signatures. The petitioner approached me this spring and they were interested in having a second house and we went through this process. Going through this they were able to sign the mylar and the Administrative Subdivision moved forward and that now has been recorded, which does make it now under the 5 acres and the Detached Accessory Dwelling Unit is 200' square feet over the minimum requirement. Staff recommendation with the findings did find that there would be a hardship and the staff recommendation is to approve both design standards variances from the DADU Condition No. 55 for the Minimum Lot Size and Minimum Area requirements of Chapter 802.

RECOMMENDED MOTION:

Approve the design standard variances from the DADU Condition #55 Minimum Lot Size and Maximum Area requirements of Chapter 802 of the Monroe County Zoning Ordinance based on the findings of fact.

FINDINGS OF FACT: DADU Cond. 55 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**

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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 permit the existing residence as a DADU and build a new structure as the primary Single Family Residence;
- The site has a 1,274 sf home and a 144 sf shed built in 1995 per property report card;
- There are no designated scenic areas adjacent to the petition site;
- There is no evidence that a DADU and new primary residence would obstruct a natural or scenic view;
- Conclusion: It would not impair the stability of a natural or scenic area.

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

Findings:

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

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

Findings:

- See findings under A(1) and A(2);
- The petitioner went through an administrative subdivision in 2019-2020 that rendered the lot under 5 acres due to resolving a neighbor encroachment;
- The proposal would meet all other Chapter 802 and 804 design standards;
- Conclusion: The character of the property included in the variance would not be altered in a manner that substantially departs from the characteristics sought to be achieved and maintained 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

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not affect the use and value of the area adjacent to the property included in the variance in a substantially adverse manner, because:

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

Findings:

- See findings under A (1);
- The petition site and adjacent properties are zoned Agricultural Rural Reserve (AG/RR);
- The petition site and adjacent properties are a residential use;
- Conclusion: The specific purposes of the design standard sought to be varied **would be satisfied**.

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

Findings:

- See findings under A (1);
- There is no FEMA floodplain on site;
- Drainage from the existing structures run towards the east to the existing pond;
- Conclusion: It **would not** promote conditions (on-site or off-site) detrimental to the use and enjoyment of other properties in the area.

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

Findings:

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

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

Findings:

- The strict application of the ordinance would not allow an additional residence on the site;
- If the variances are granted, an
- Petitioner has applied for two variances, which is the minimum necessary to add an Accessory Dwelling Unit;
- The Barger Type E Administrative Subdivision was pursued by the previous owner because of encroachment by the southern neighbor;
- This subdivision process began in October 2019 and wasn't completed until March 2020;
- The subdivision required dedication of Right of Way – before dedication these variances would not have been required;

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- Conclusion: There **are practical difficulties** in the use of the property as defined in Chapter 801;

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

FINDINGS OF FACT: DADU Cond 55 Maximum Area

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

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

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

Findings:

- Approval of the Maximum livable area variance would allow the petitioner to permit the existing residence as a DADU and build a new structure as the primary Single Family Residence;
- The site has a 1,274 sf home and a 144 sf shed built in 1995 per property report card;
- There are no designated scenic areas adjacent to the petition site;
- There is no evidence that a DADU and new primary residence would obstruct a natural or scenic view;
- Conclusion: It would not impair the stability of a natural or scenic area.

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

Findings:

- See findings under A (1);
- The property has access from S Ketcham Road, a designated local road;
- The proposed construction of the new primary residence would be required to meet planning and building requirements;
- 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

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

Findings:

- See findings under A(1) and A(2);
- The proposal would meet all other Chapter 802 design standards;
- Conclusion: The character of the property included in the variance would **not be altered** in a manner that substantially departs from the characteristics sought to be achieved and maintained within the relevant zoning district.

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

Findings:

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

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

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

Findings:

- See findings under section A;
- The petition site and adjacent properties are a residential use;
- Conclusion: The specific purposes of the design standard sought to be varied **would be satisfied**;

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

Findings:

- See Findings under Section A and B(1);
- There is no FEMA floodplain on site;
- Drainage from the existing structures run towards the east to the existing pond;
- Conclusion: It **would not** promote conditions detrimental to the use and enjoyment of other properties;

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

Findings:

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- 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 existing structure exceeds the Maximum livable area requirement by 274 sf;
- The home was built in 1995 and is within livable condition;
- Expansion of the existing structure wouldn't be reasonable based on the location of the driveway and slopes;
- Conclusion: There **are practical difficulties** as defined in Chapter 801;

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

QUESTIONS FOR STAFF – 2002-VAR-16 & 2002-VAR-17 – Byers

Kaczmarczyk: Any questions for staff? Seeing none. Is the petitioner here?

**PETITIONER/PETITIONER'S REPRESENTATIVE –
2002-VAR-16 & 2002-VAR-17 – Byers**

Byers: Yes, I am.

Kaczmarczyk: Would you like to speak Mr. Byers?

Byers: Only if you have questions for me. I think it speaks for itself. I think Anne has done a very good job.

Kaczmarczyk: Ok. Does anyone have any questions for Mr. Byers? Thank you Mr. Byers.

Byers: Thank you.

Kaczmarczyk: Anybody else here wish to speak on behalf of the petition? Anybody here wish to speak against the petition? Seeing none. I would entertain a motion, please.

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SUPPORTERS – 2002-VAR-16 & 2002-VAR-17 – Byers: None

FURTHER SUPPORTERS – 2002-VAR-16 & 2002-VAR-17 – Byers: None

REMONSTRATORS - 2002-VAR-16 & 2002-VAR-17 – Byers: None

ADDITIONAL QUESTIONS FOR STAFF – 2002-VAR-16 & 2002-VAR-17 – Byers: None

FURTHER QUESTIONS FOR STAFF – 2002-VAR-16 & 2002-VAR-17 – Byers

Hosea: I can do that.

Kaczmarczyk: Thank you, Bernie.

Hosea: That is actually William.

Kaczmarczyk: Oh, I am sorry, William.

Hosea: That is ok, we look alike. **In case number 2002-VAR-16 and 2002-VAR-17, petitioners Byers requesting a design standards variance to Chapter 802 for a Detached Accessory Dwelling Unit, Condition No. 55 for Minimum Lot Size and a design standards variance to Chapter 802, Detached Accessory Dwelling Unit, Condition No. 55 for the Maximum Area at 8966 South Ketcham Road, I move that we approve the petitioner's request.**

Guerrettaz: I **second** that, the good-looking twin.

Kaczmarczyk: Please call the roll, Larry.

Wilson: Ok, the vote is on petition 2002-VAR-16 and 2002-VAR-17, the Byers development standards variance requests for Conditions 53 and 55 of Chapter 802 regarding the Detached Accessory Dwelling Unit. A vote in favor is a vote to grant both variances. Vicky Sorensen?

Sorensen: Yes.

Wilson: Margaret Clements?

Clements: Yes.

Wilson: Bernie Guerrettaz?

Guerrettaz: Yes.

Wilson: William Hosea?

Hosea: Yes.

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Wilson: Mary Beth Kaczmarczyk?

Kaczmarczyk: Yes.

Wilson: Both variances are granted by a 5 to 0 vote.

The motion in cases 2002-VAR-16, Byers DADU Cond. No. 53 Variance from Chapter 802 and 2002-VAR-17, Byers DADU Cond. No. 55 Variance from Chapter 802, favor of approving the variances, carried unanimously (5-0).

NEW BUSINESS

6. 2003-VAR-18

Ennis HBB Cond. No. 16 Variance from Chapter 802

One (1) 9.87 +/- acre parcel in Richland Township, Section 15 at 6675 W Ratliff Rd.

Zoned AG/RR. Contact: acrecelius@co.monroe.in.us

BOARD ACTION: Kaczmarczyk introduced the petition.

STAFF ACTION:

Crececius: This is the Ennis Home Based Business Variance from Condition 16 from Chapter 802. This is a Home Based Business Permit Variance. He is approved for a Home Based Permit but there is a condition with that which is Condition 16 that does require outdoor screening of outdoor equipment. The property is located in Richland Township in Section 15. It is located at the address 6675 West Ratliff Road. The Home Based Business Condition is that use shall be conducted within the building or structures on the site. So, the main part that we are looking at is that equipment shall be stored as to not be visible from the street or adjoining property. If we can go to the next slide. The property is currently zoned Agricultural/Rural Reserve and located off of West Ratliff Road. With the Comprehensive Plan it is zoned Rural Residential. The petition site is 10.37 acres.

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There is no much hill or slope on the property. It naturally drains toward the east of the property. This petition originally began as an anonymous complaint that started an enforcement case about burning debris on the property. Upon investigation the Zoning Inspector identified that a commercial business was being run on the property without the proper permitting. The petitioner met the criteria for the Home Based Business, was very compliant and we went through the process but in order to get final approval for the Home Based Business Permit he would be required to add some screening in order to not see the equipment from the road. On your screen currently, on the left is a pictometry view. It is a little bit outdated. The middle of the screen is aerial view. You can see expanding parking and quite a bit of equipment. On the far right is a list of some of the equipment that he has, quite a bit of it was present during a site visit. The property is located on a hill. It can be difficult to see but it is visible if you were to look to the south as you are driving Easton Ratliff. You can see it from a church parking lot that is kind of up on a hill. So, this is looking at the driveway. The left is the zoomed out photo. On the right is if you were to zoom in you can see a bucket truck, you can see multiple pieces of equipment. Closer view of the primary residential and more equipment. It was not all there but I think that was the majority of the equipment that he does have. It was a rainy day and I don't think there was too much that was gone that day at all. Staff does recommend approval of the design standards variance with the following condition;

- 1) Plant 5 native trees listed within Chapter 830, Table 30-5 or 30-6, which is our landscaping chapter.

Something either along his driveway or along his property, something that would mitigate visibility of his equipment but was not be as extensive as building a barn or extensive screening because the property is naturally located on a hill, is visible from multiple properties. So, it seems somewhat reasonable. Does anyone have any questions?

RECOMMENDED MOTION:

Approve the design standard variance from the outdoor storage screening requirement of Chapter 802 of the Monroe County Zoning Ordinance based on the findings of fact and the following condition:

1. Plant five (5) native trees listed within Chapter 830 Table 30-5 or 30-6.

FINDINGS OF FACT: Minimum Lot Size Standard

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

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

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

Findings:

- Approval of the variance would allow the petitioner to receive an approved Home Based Business Permit without screening of outdoor equipment;
- The site currently holds a Single Family Residence and two gravel parking areas used for

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the business;

- There are no designated scenic areas adjacent to the petition site;
- There is no evidence that the HBB without screening would obstruct a natural or scenic view;
- Conclusion: It would not impair the stability of a natural or scenic area.

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

Findings:

- See findings under A (1);
- The property has access from W Ratliff Road, a designated local road;
- The proposed HBB without screening will not interfere with water lines or septic;
- Conclusion: It would not interfere with or make more dangerous, difficult, or costly, the use, installation, or maintenance of existing or planned transportation and utility facilities.

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

Findings:

- See findings under A(1) and A(2);
- The proposed HBB would meet all use design standards except Condition 16 for outdoor storage screening;
- Condition 16 applies to all home based businesses in the County, which is permitted in many residential zones;
- Conclusion: The character of the property included in the variance would not be altered in a manner that substantially departs from the characteristics sought to be achieved and maintained within the relevant zoning district.

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

Findings:

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

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

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

Findings:

- See findings under A (1);
- The petition site is zoned AG/RR with adjacent properties zoned AG/RR and Estate Residential (ER);
- The petition site and adjacent properties are a residential use;
- Conclusion: The specific purposes of the design standard sought to be varied **would be satisfied**.

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

Findings:

- See findings under A (1);
- There is no FEMA floodplain on site;
- Drainage from the existing structures run towards the west and/or east to existing large ravines;
- Conclusion: It **would not** promote conditions (on-site or off-site) detrimental to the use and enjoyment of other properties in the area.

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

Findings:

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

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

Findings:

- The strict application of the ordinance would require the petitioner to install multiple screenings or a large structure;

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- The petitioner site located on a hill and is visible from multiple surrounding properties and a public Right of Way;
- If the variance is not granted, vegetative screening or a structure would be required to receive an approved Home Based Business permit;
- The cost of the screening or structure to house the equipment would be a significant burden for a Home Based Business;
- Conclusion: There **are practical difficulties** in the use of the property as defined in Chapter 801;

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

QUESTIONS FOR STAFF – 2003-VAR-18 - Ennis

Kaczmarczyk: Any questions for staff? Hearing and seeing none. Is the petitioner here?

PETITIONER/PETITIONER’S REPRESENTATIVE – 2003-VAR-18 – Ennis

Ennis: Yes, ma’am.

Kaczmarczyk: Would you like to speak, sir?

Ennis: Yes, I would.

Kaczmarczyk: Can you state your name for me sir?

Ennis: It is David but I go by Josh, Ennis, E n n i s.

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

Ennis: Yes, ma’am.

Kaczmarczyk: Thank you sir.

Ennis: I am at the top of my house here in the second story and where I am you wanted me to plant some trees to hide it from a neighboring church area. I kind of wanted to show everyone since we are on a virtual meeting, so I am going to turn my computer. The Nazarene Church is past that blue barn on top of the hill and there is a major tree line there. You can see a glimpse of it, of course you can see the top of it. But with the tree line that is already there you can’t see from that direction. Where she took a picture it is actually humped at the end of property right when it gets to the road. It is humped about 12 feet down and the only way you can see down my driveway is when you come up on top of my hump where the driveway is. So, where she took those pictures

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she had driven up on top of the hump to look straight down the driveway. You can see it from Steve and Kim's house, which if you are looking on the site plan, I don't know if there is a way to pull that back up or not, the big pole barn, yeah, there it is, that's good, the big pole barn that is one the left that whole area the only place where you can really see is where you see that car driving on the road is right there. So, I don't know for maybe 20 yards you can see my stuff right there and you have to be looking at it as soon as you top the hill or you completely miss it because it swoops down with the angle of where the driveway is, kind of where it makes a right and left at the road that is where she humped up to take a picture. So, I did tell Anne if you go up to the right and you go all the way down the driveway on where this first starts on the right side where you can see on the picture on the right, I would be more than happy to plant a couple of trees right there in front of that. Whoever is doing that mouse, move to the left and go up some, yes, right there. But the other side my wife just last week someone drove down my driveway in the evening, she was outside and she thought it was me because it was dark and it was a truck. She had went inside and every now and then I will check my final emails for the day in my truck. She sent my 7 year old son to tell me dinner was ready and there was someone sitting out there. Who has the mouse? That would be great if you could move that back. Yes, if you could go to the picture on the right. If I could keep from having to plant trees there, which wouldn't do anything from seeing where I initially told you at Steve and Kim's house because of that angle because of the hillside you can see right through that whether I plant trees there or not. I would like to be able to see if someone is coming down my driveway from house and my wife for safety to be honest with you. So, I guess that is what I am asking for. That would be about it I guess. If anybody has any questions I would be happy to answer them.

Kaczmarczyk: Does anyone have any questions for the petitioner?

Guerrettaz: This is Bernie. So, my understanding is the petitioner doesn't have a problem 5 native species trees, what he is trying to do is discuss with staff certain locations. Anne, are you in agreement with what Mr. Ennis is talking about there?

Creceilius: I was imagining planting something much farther down the driveway much closer to the road. That might still block is view of the road but it wouldn't block visibility as someone turned into and drove up his driveway.

Guerrettaz: Do you understand what Anne is saying?

Ennis: Yes I do and if I did that I wouldn't be able to see to pull out. Because it's on a hump and you have got to get there to see if cars are coming.

Creceilius: There are some trees already planted, existing trees, I was thinking something along where the curser is, something that might fill in that area.

Ennis: There is already half a dozen trees right there to begin with.

Creceilius: There is only a few.

Ennis: There is 6. I can look down my driveway and see them now.

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Guerrettaz: Mr. Ennis, where staff is proposing those trees that won't impede sight distance turning out on the county road. Is that correct?

Ennis: It would not. However, that is where my culvert is. Water sits there constantly, so if trees are planted there they are not going to live regardless. If you want me to plant them there that is fine but they won't live.

Guerrettaz: Well, I think what staff is trying to do is find another practical location to screen because that could be part of a site plan requirement.

Ennis: I am sorry to interrupt you but it still would not block the view of where I was talking about where you can see my stuff. Because I can't come over any further into Steve and Kim's property to begin with.

Guerrettaz: Anne, do you know where Mr. Ennis wants to plant these trees?

Creceilius: I don't really. I understand that he doesn't want trees near his house. There is really no way to block visibility of his extensive amount of equipment around his house. It is not feasible. He is on a hill, no matter what he did he would not be able to block it around his home. I think the most practical way would be to block somewhere down toward Ratliff. I was thinking the tree line. Maybe it could be something farther from the road. I think that is probably fairly reasonable. I didn't notice a culvert in that area. It is a hump up kind of where those trees are. Mainly just trying to find a happy median because it is visible but there are difficulties with blocking all of the equipment. The petitioner is on the verge of frankly being too large for a Home Based Business Permit. So, mainly just trying to find a happy compromise where we can block all of the outdoor storage of equipment while not limiting visibility of his 10 acre lot.

Guerrettaz: Right and I guess, I don't mean to dwell on this but what I am trying to do is maybe have Mr. Ennis and I think it is worth our time here to show where he wants to plant the trees and if I missed that I apologize and show you where that is at because if not you are going to be in a back and forth with petitioner for probably quite a while to get this hammered out and I am trying to help you to not have to.

Ennis: I am sorry if I am interrupting. Whoever used the mouse earlier on the picture on the right, if you were to go up and to the left right there, that would block if you are looking straight down the driveway and those other trees are already up there to it would be to the north. You can kind of see them, there you go. If you see my property line there I guess that would be toward the east. Where that car is there is nothing that can be done to not see that corner right there and if I was to plant trees right there along my gravel I couldn't see people coming in and down my driveway.

Ennis: Guerrettaz: So, on that whole strip you can't find a place for any more trees ...

I can but if I planted further straight down, I mean, I would just have to come straight down and it would be planting trees for no reason. Do you know what I am saying? Not to mention it would look goofy as can be. I can plant 5 big trees right there in a row straight down from there if you want me to. I would also like to say that property straight to the west is like a jungle, it would take

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forever to clear that out, and I am actually looking into buying that. There is 22 acres there and it is completely secluded. You can't see anything from back there and I would actually like to move all of my stuff over there eventually but I am still in discussions with my neighbor who owns it. He is wanting to sell it but I am not saying that is a done deal. It's not but that is the future plan, hopefully. I don't really have a good place to build, what?

Creceilius: I am sorry. Jackie, would you mind going back to the site conditions and the slope map?

Nester Jelen: William, did you have a question? You have your hand raised.

Hosea: No, they answered it.

Nester Jelen: Ok. This one Anne?

Creceilius: Yes. I think mainly what we are getting at is I visited in the early spring, there weren't leaves on the trees, things were more visible than they are now but that is also life in Indiana, the majority of our year there are not leaves on our trees. I know your grandparents live in the property directly to the east. Would they not be fine with something to follow the tree line?

Ennis: They actually live, if you look to the property directly to the north where it makes another "I", well, actually they are combined. It makes 2 "Is" and that is Steve and Kim's property before it.

Creceilius: Directly along the driveway.

Ennis: They bought that as an estate in like a living estate, I guess you could say. That little trailer behind the pole barn is their home, which you couldn't see from the road anyway.

Creceilius: Yes, so we can kind of see that I mean there is drainage where that existing tree line is there not something that you could plant along just south of the existing trees that we can see in the upper left map. You can see existing tree line near what is it 792 elevation, something that might run maybe near your property border that would give you plenty of driveway that you would see if somebody came up your driveway but would probably provide enough foliage that it would block it from Ratliff.

Ennis: On the east and west line is where Steve and Kim's house is, the main residence.

Creceilius: Yes, I am thinking kind of a natural grouping kind of still kind of facing toward Ratliff but along that property boundary. I am not necessarily worried about that view from Ratliff. I am mostly looking for a happy medium because I know that we can't, we don't want to ask you to screen your home and where your equipment is because that would be quite extensive. So, do you have a clustering of landscaping that we could maybe do in that area?

Ennis: I can plant some trees right there on the east and west line where Steve and Kim's house is. That would be in the hump and wouldn't have a drainage issue there that would kill the trees.

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Nester Jelen: Did you have a question, Margaret?

Clements: Yes, I have 2 questions actually. If we grant this exception to Condition 16 for a Home Based Business does that exist in perpetuity or is it just for Mr. Ennis and for this particular business which has to do with his tree service industry?

Nester Jelen: That is a good question.

Clements: The second question I have is at what point is the size of the home of the Home Based Business considered to be really too large when the equipment is really not able to be concealed by the buildings or the structures on the site?

Creceilius: The first question it would not exist in perpetuity. It would only apply to Mr. Ennis's Home Based Business. He is approved for all other facets of having a Home Based Business except for the screening, outdoor screen requirement. The second question is that, I am sorry I lost my train of thought. What was the second question?

Nester Jelen: At point is it too big?

Creceilius: The threshold right now and correct me if I am wrong Jackie if there are more nuances but right now the threshold is at employees. So, right now we would allow 2 off-base, away from home employees for 3 total. So, one at the residence and 2 away from the property.

Nester Jelen: I think Margaret your question is well pointed. I think we don't have a great use distinction for like rural landscaping or rural contractor so this somewhere between General Contractor and Home Based Business. What we are trying to do is have him apply and meet all of the standards for a Home Based Business. So, as Anne stated if we made this variance conditional, specific to this Home Based Business obviously if he moves to the site next door that does not apply to that new property. But if he does get to big and we get a new complaint we would have to find that he has too many employees or that the character of the area has substantially changed and that is difficult for to find out both of those answers.

Clements: On page 94 in one photograph on one day I see 10 vehicles in the driveway and that is kind of excessive for a Home Based Business to keep within the zoning restrictions. That is just an observation that I would like to share with my colleagues on the Board of Zoning Appeals.

Schilling: I would like to make one point though. If you grant a variance that runs with the land, so any Home Based Business that would go in there I think would be subject to that variance and be able to enjoy the benefits of that variance.

Clements: So, if for instance if he decided to change the nature of his business and decided to do something that was more noxious for instance, considered to be more noxious by neighbors then we would be approving that Home Based Business tonight.

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Schilling: You would be approve the variance from Condition 16, so you could accept a commitment from him that if the business ever came to a different type of business that that variance would be considered void. But that would require a commitment, I think.

Clements: Ok, thank you for clarifying, David.

Ennis: Can I say one thing? I personally own 7 more trucks. 2 of them are getting sold. I am replacing the 2 that is why I have got 7, so there will be 5 total of my trucks. I do have 2 employees. I am a quarter mile off of the road, I don't know if that matters to you guys. With the nature of my business I don't have anybody who comes here to buy things or do plans, it is just my employees that show up. I would be happy to go through and show you the trucks that are mine and not in that photo if you would like. At one time I did have 4 employees. I have been operating out of this location because my dad owned it prior to myself for 12 years before there was ever a complaint. The complaint that was brought forth had nothing to do with me running a business it was the fact that I burned some stuff here on the property and they weren't happy about the smoke. Every person that I was required to send a letter to reached out to me and said that they would be happy to come to the meeting, which obviously didn't happen in my favor. I do allow people every now and then my neighbors especially, we bring home logs at times that make good firewood they come here and I let them have it to heat their homes in the winter. My cousin, Craig, who is one of my employees does cut some wood here and sells it on his own time. But other than that there is nobody that comes here for business reasons. The people that do come here for business reasons are my employees and the people that don't are coming here as a favor. There is no money involved with that.

Nester Jelen: Similar to the first case if folks do decide to continue this case, he is still operating and able to operate the business out of this property and maybe we could take another chance to talk with Mr. Ennis about specific, any kind of compromise on screening, commitment and things like that. Just to throw that out there to the BZA members.

Ennis: I would say that I would commit to the 2 trees on the one side and the 3 more up at the hump which would be south of where Anne initially said, not by far but by like 50 yards.

Guerrettaz: Anne, do you know where he is talking about? This Bernie, I am sorry. We are getting hung up on some stuff here that just isn't important but we are looking at 3 trees on a quarter mile driveway so let me ask again. Anne, do you understand where Mr. Ennis wants to plant these 3 trees on the east side of the driveway? Has he been clear to you on that?

Creceilius: Not exactly and I think we are confused. The requirement that I included was 5 trees. I think we could clarify the area.

Guerrettaz: I think 5 is fine. We have got 2 on the side by that bump out. It looks to me to be on the west side of that driveway so we are looking 3 trees. I see a grove of trees where Mr. Ennis is saying there is a culvert and I am wondering of those trees block the view of cars coming down his driveway. The big trees up there just south of the driveway on the east side.

Ennis: They are taller so the foliage is higher.

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Guerrettaz: My suggestion is that we plant the 3 trees between those trees and Ratliff Road so that we do not obstruct the site distance to Ratliff Road which we wouldn't anyway and they will be on the north side of those trees so once the car or any truck comes down that MR. Ennis wants to view, it will be in that first section and once they get south of the existing trees then it will be the best chance for visibility and if he has got to put in a dinger or a light or something up there to notify him then I don't know that these trees are going to be the end all to making sure that he doesn't know that somebody is coming in his driveway or not. So, I am prepared to make a motion.

Guerretta: I think that sounds really good Bernie. Thank you.

Ennis: The area there is a water line coming right down my driveway, right there and also would not block from the area of which I said you can actually see my equipment.

Guerrettaz: Ok, I can still make a motion. I will be ready once you are ready, Mary Beth, once you have done all of your stuff.

Kaczmarczyk: Ok. Anybody else here to speak on behalf of the petition? Seeing none. Anyone here to speak against the petition?

Nester Jelen: I am not seeing anyone, Mary Beth.

Kaczmarczyk: Ok. Thank you. Bernie?

SUPPORTERS – 2003-VAR-18 – Ennis: None

FURTHER SUPPORTERS – 2003-VAR-18 – Ennis: None

REMONSTRATORS - 2003-VAR-18 – Ennis: None

ADDITIONAL QUESTIONS FOR STAFF – 2003-VAR-18 – Ennis: None

FURTHER QUESTIONS FOR STAFF – 2003-VAR-18 - Ennis

Guerrettaz: **In the matter of case number 2003-VAR-18, Design Standards Variance to Chapter 802, Home Based Business Condition 16 at 6675 West Ratliff Road, I move that we continue this petition to the next BZA meeting and I would suggest that Mr. Ennis go ahead and put on a map the location of where he wants the trees and bring that to us so we can see exactly what he is planning. I also suggest that he come up with a written commitment to address Margaret's question regarding a commitment for property that he can also work out with staff and they can maybe explain that a little better to him than what I can at this time.**

Nester Jelen: The meeting, Bernie, just to clarify is on June 3rd.

Guerrettaz: **June 3rd**, thank you.

DRAFT

Hosea: I will **second**.

Kaczmarczyk: Larry, will you call the roll?

Wilson: The vote is on a motion continue petition 2003-VAR-18, Ennis Home Based Business Condition Variance request to the June meeting. A vote in favor is a vote for the continuance. Margaret Clements?

Clements: Yes.

Wilson: Bernie Guerrettaz?

Guerrettaz: Yes.

Wilson: William Hosea?

Hosea: Yes.

Wilson: Mary Beth Kaczmarczyk?

Kaczmarczyk: Yes.

Wilson: Vicky Sorensen?

Sorensen: Yes.

Wilson: The petition is continued to the June meeting of the Board of Zoning Appeals.

The motion in case 2003-VAR-18, Ennis HBB Cond. No. 16 Variance from Chapter 802, to continue this case to the June Board of Zoning Appeals Meeting, carried unanimously (5-0).

NEW BUSINESS

7. 2003-VAR-19

**Holsapple Side Yard Setback Variance from Chapter 804
Holsapple Minimum Lot Width Variance from Chapter 804
One (1) 3.53 +/- acre parcel in Clear Creek Township, Section 17**

DRAFT

at 8023 S Old State Road 37.

Zoned AG/RR. Contact: dmyers@co.monroe.in.us

STAFF ACTION: Petition has been continued by staff.

NEW BUSINESS

8. 2003-VAR-20

Carter Front Yard Setback Variance from Chapter 833

One (1) 0.44 +/- acre parcel in Van Buren Township, Section 12
at 2728 S Leonard Springs Rd.

DRAFT

Zoned RS3.5. Contact: dmyers@co.monroe.in.us

BOARD ACTION: Kaczmarczyk introduced the petition.

STAFF ACTION:

Myers: Can everyone hear me ok?

Nester Jelen: It is a little quiet but yes.

Myers: If I hold it up like this maybe it will help. This is the Carter Front Yard Setback Variance from Chapter 833. Jackie, if you could go ahead and go to the next slide. Here is some summary and background. The petitioner requests the design standards variance from the Front Yard Setback requirement of Chapter 833 for the purposes of constructing a 24' foot by 24' foot attached garage. The proposed garage will be attached to the west side of the existing single-family residence and that existing residence is located approximately 56' feet from the centerline of South Leonard Springs Road. The attached garage will be located approximately 104' feet from the centerline of South Leonard Springs Road. Now, according to Chapter 833 the front yard setback requirement for structures in the RS3.5 zoning district with frontage to a minor arterial roadway is 65' feet measured from center line. The existing home encroaches into that setback approximately 9' feet and it is therefore classified as nonconforming and since the garage will be attached to that nonconforming structure it has to go through the variance process. The property is located at 2728 South Leonard Springs Road in Section 12 of Van Buren Township. It is currently zoned RS3.5. The Comprehensive Plan has it designed as MUA Mixed Use and MUA Phase 2 has it designated as N1. Now we have some site conditions here. The site is 0.44 acres and is accessed off of South Leonard Springs Road and West Fleener Avenue, which is a local road. The primary residence utilizes a septic system. There are no known karst features on the lot. FEMA Floodplain is not located on the lot and the majority of the property exhibits slopes that are less than 15 percent. Drainage of the site runs east and southeast. Now we have some pictures here of the site. In this first one here you can see the driveway cut and the petition sign that is South Leonard Springs Road there. The one in the middle is a reverse image. You can still see South Leonard Springs Road and the driveway cut. In the top right photograph is of the front yard of the home. Some more photographs here of the home and the roadway just from different angles. Just some more images here. The bottom right photograph really shows that distance from the center line to the existing single family residence. Here we have some aerial photography of the site. I will show the site plan here in the next couple of slides but proposed attached garage will placed to the west of this extension that they have here so that they can use it with their driveway. Here we have the petitioner's letter to the Board of Zoning Appeals requesting the variance and here we have a pair of site plan images. So, you can see in the left image some more detailed measurements of the site with respect to the project 24' by 24' foot attached garage. Again, the home is about 56' feet from the center line of South Leonard Springs and the garage itself will of course will sit well outside of that setback at 104'. Department comments: Highway Department had no comments and the Stormwater Department didn't have any comments. Finally, staff recommendation is approval of the Front Yard Setback requirement to Chapter 833, based on the findings of fact and subject to the Monroe County Highway Department and Stormwater Engineer reports. I will now take any questions if anyone has any.

RECOMMENDED MOTION:

Staff recommends **approval** of the front yard setback requirement to Chapter 833 based on the findings of fact and subject to the Monroe County Highway Department and Stormwater Engineer reports.

FINDINGS OF FACT: Front Yard Setback Chapter 833

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

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

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

Findings:

- The site is 0.44 +/- acres and is zoned Single-Dwelling Residential (RS3.5);
- The site is accessed off of S Leonard Springs RD (minor arterial) and W Fleener AVE (local);
- There are no visible karst features on the site or FEMA floodplain;
- There are no designated natural or scenic areas nearby;
- Approval of the variance would allow the construction of a 24' x 24' attached garage to be located on the west side of the existing single-family residence;
- The existing single-family residence is approximately 56' from the centerline of S Leonard Springs RD;
- The proposed attached garage will be located approximately 104' from the centerline of S Leonard Springs RD;
- The required front yard setback is 65' measured from centerline per Chapter 833;
- The proposed 24' x 24' attached garage will be located in buildable area;
- The attached garage will meet all other required design standards;
- **Conclusion:** It would not interfere with a natural or scenic area.

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

Findings:

- See findings under A(1);
- The property is addressed off of S Leonard Springs RD, a minor arterial (100');
- The minimum building front yard setback from centerline is 65';
- The site is serviced by a septic system;
- Allowing the attached garage to be constructed in its proposed location will have no foreseeable impact on utilities;
- **Conclusion:** It would not interfere with or make more dangerous, difficult, or costly, the use, installation, or maintenance of existing or planned transportation and utility facilities.

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

Findings:

- See findings under A(1) and A(2);
- The required front yard setback is determined by the Thoroughfare Plan and the corresponding value for the RS3.5 zone as represented in Chapter 833;
- The 2018 Thoroughfare Plan designates S Leonard Springs Road as a Minor Arterial Road with 100' of ROW;
- The required front yard setback per Chapter 833 is measured from centerline;
- The required front yard setback for structures is 65';
- The use of the property is residential;
- The surrounding areas are primarily residential with a religious organization adjacent to the north;
- The Comprehensive Plan MCUA Phase I designates this area as Mixed Use;
- MCUA Phase II designates this area as Urban Infill Neighborhood (N1);
- The attached garage will meet all other design standards;
- **Conclusion:** The character of the property included in the variance would not be altered in a manner that substantially departs from the characteristics sought to be achieved and maintained with the relevant zoning district.

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

Findings:

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

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

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

Findings:

- See findings under A(1), A(2), and A(3);
- The petitioner is applying for a front yard setback variance which is the minimum design standard sought to be varied;
- **Conclusion:** The specific purposes of the design standard sought to be varied would be satisfied.

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

Findings:

- See findings under A(1) and A(2);
- Approval of the variance would allow the petitioner to construct a garage attached to a single-family residence that encroaches approximately 9' into the 65' front yard setback;
- **Conclusion:** It would not promote conditions (on-site or off-site) detrimental to the use and enjoyment of other properties in the area (e.g., the ponding of water, the interference with a sewage disposal system, easement, storm water facility, or natural watercourse, etc.).

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

Findings:

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

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

Findings:

- See findings under A(1);
- There exists no other feasible alternative, within the terms of the ordinance, for the landowner to place an attached garage on the property without having to apply for this variance;

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

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

QUESTIONS FOR STAFF – 2003-VAR-20 – Carter

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Kaczmarczyk: Does anyone have any questions for Drew? Is the petitioner here?

PETITIONER/PETITIONER'S REPRESENTATIVE – 2003-VAR-20 – Carter

Carter: Yes ma'am.

Kaczmarczyk: Do you wish to speak?

Carter: I have lived here since 1994.

Kaczmarczyk: Sir, if you want to speak, I am going to have to swear you in first.

Carter: I have lived here since 1994 when I first bought the property.

Kaczmarczyk: Can I swear you in, sir?

Carter: Yes ma'am.

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

Carter: Yes, ma'am.

Kaczmarczyk: Please state your name.

Carter: Randy Carter.

Kaczmarczyk: Ok, continue sir.

Carter: Thank you. I have lived here since 1994. Fleener Avenue when I bought this place didn't have a variance on that road because that was still part of my land. I found out when I did this variance in 1997 I guess the county took it over, which I wasn't aware of it because nobody has ever plowed it or maintained it. Usually we just had somebody come in or my son or whoever to plow the street to let us have access to get out in the winter. Like I said, I did not know the county even took it over. Me and my wife are getting up in age and we would like to have a garage to put our vehicles in to keep them out of the weather and that is why we are trying to build a garage.

Kaczmarczyk: Thank you sir. Does anyone have any questions for the petitioner? Seeing none. Is there anyone else here that wishes to speak on behalf of the petition?

Nester Jelen: We just had someone enter the meeting. Camille Wheeler.

Wheeler: Yes.

Nester Jelen: Are you here for a certain petition?

Wheeler: Yes, I am here for the Lake Lemon case.

DRAFT

Nester Jelen: Ok, that is coming up. I just wanted to check to make sure. Thank you.

Kaczmarczyk: Anyone here who wishes to speak against this petition? Seeing none. I will entertain a motion, please.

SUPPORTERS – 2003-VAR-20 – Carter: None

FURTHER SUPPORTERS – 2003-VAR-20 – Carter: None

REMONSTRATORS 2003-VAR-20 – Carter: None

ADDITIONAL QUESTIONS FOR STAFF – 2003-VAR-20 – Carter: None

FURTHER QUESTIONS FOR STAFF – 2003-VAR-20 - Carter

Hosea: I would like to make a motion.

Kaczmarczyk: Thank you William.

Hosea: In case number 2003-VAR-20, petitioner is Carter, requesting a design standards variance to Chapter 833 for Front Yard Setback at 2728 S. Leonard Springs Road, I move that we approve the petitioner's request.

Kaczmarczyk: I will **second** that.

Wilson: The vote is on petition 2003-VAR-20, Carter Front Yard Setback Variance from Chapter 833. A vote in favor is a vote to grant the front yard development standards variance. Bernie Guerrettaz?

Guerrettaz: Yes.

Wilson: William Hosea?

Hosea: Yes.

Wilson: Mary Beth Kaczmarczyk?

Kaczmarczyk: Yes.

Wilson: Vicky Sorensen?

Sorensen: Yes.

Wilson: Margaret Clements?

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Clements: Yes.

Wilson: The variance is granted 5 to 0.

The motion in case 2003-VAR-20, Carter Front Yard Setback Variance from Chapter 833, favor of approving the variance, carried (5-0).

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NEW BUSINESS

9. 2003-VAR-21

McMullen Use Variance from Chapter 802

One (1) 0.40+/- acre parcel in Benton Township, Section 35
at 8935 E Southshore Dr.

Zoned SR. Contact: rpayne@co.monroe.in.us

BOARD ACTION: Kaczmarczyk introduced the petition.

STAFF ACTION:

Payne: Jackie, next slide, please. Here we have a Use Variance request and the petitioner is seeking this request to continue renting the property at 8935 East Southshore Drive for a short-term rental. The current use of the property is considered Tourist Home or Cabin and that is not permitted in the zoning designation which is Suburban Residential. Therefore the owner needs to be granted a rezone or a use variance. Other nearby zones to the petitioner is Forest Reserve and so that requires of minimum of 5 acres. So, the possibility of rezoning wasn't really practical so the petitioner is requesting a Use Variance instead of a rezone. During a recent site visit to a location nearby the petitioner's property the Planning Department became aware the petitioner's property was potentially in violation of its permitted land use designation. After an online inspection confirmed that the home was being rented as a short-term rental unit. We went ahead and sent an enforcement letter requiring the immediate cease and desist of the use. I want to take a minute to define what, actually Jackie you can go back one slide, thanks. Before I talk about location and zoning I just want to say that a Tourist Home or Cabin is defined in Chapter 802 as building or portion thereof in which 4 or fewer guest rooms are furnished to the public under the terms of a short-term lodging agreement. Ok, so that is sort of the background that I wanted to share with you. So, just quickly the location again 8935 East Southshore Drive, which is by Lake Lemon. The current zoning is Suburban Residential. Site conditions, this is a 0.40 give or take acre parcel. It shares an access point with the Bloomington Yacht Club. There is some slope on this property but where the petitioner's home is, is not impacted by slope. The Comprehensive Plan has this designated as Rural Reserve. Here are some photos, so that you can get a sense of this property. The upper left is looking at the front of the house. The upper right is looking at the house from East Southshore Drive. Behind it the building in the red I think that is the Yacht Club. The bottom left is standing on their property looking west toward there is like an inlet there that is adjacent to their property and bottom right again is just looking from the roadway up to the property. You can see the inlet there on the left. The front of the house is there on the right. Next photo. Again, similar photographs. The upper right photo is a shot of the home across the street from the petitioner. The bottom left is kind of standing in there driveway and that is the Porthole Inn there, that grey building in the bottom left and bottom right is the front of the petitioner's house. This is an image looking down at the lot. Do note that north is to left and you can see the Yacht Club and the Porthole Inn and you can see their driveway again that comes off of Southshore Drive. I wanted to point out here in this table Tourist Home or Cabin is not permitted in the Suburban Residential zone. It is permitted in a couple of other zones, 3 other zones specifically and then 5 other zones conditionally. I did intend to include the letter that the petitioner sent, so to the BZA members I know that was in my original packet to you. So, I do hope that you had a chance to read through that quite detailed letter that they submitted on their behalf. I am sorry, I meant to have it in this slide show but I didn't get it in there in time. I just wanted to point that out and then from there the

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recommended motion is denial of the Use Variance for a Tourist Home of Cabin based on the findings of fact. Are there any questions?

RECOMMENDED MOTION

Deny the use variance (Tourist Home or Cabin) to Chapter 802 based on the findings of fact.

FINDINGS OF FACT: Use Variance

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

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

Findings:

- Approval of the use variance would allow the petitioner to apply for a site plan for a tourist home at 8935 E Southshore Dr for short term lodging;
- The property derives access from E Southshore Dr, which is a Minor Collector (90' Right-of-way);
- The petition site is located in FEMA Floodplain;
- There are no known karst areas on the lot;
- Conclusion: The approval would not be injurious to the public health, safety, and general welfare of the community.

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

Findings:

- See Findings under (A);
- Approval of the use variance would permit a filing to obtain site plan approval for the proposed Tourist Home use;
- The Monroe County Highway Department and Monroe County Planning Department review site plans to confirm uses are meeting development standards on subject property in the County;
- The effect of the approval of the use variance on property values is difficult to determine;
- The neighboring uses on E Southshore Dr are residential in nature;
- There is one other permitted tourist home located less than 0.25 miles from the property;
- Conclusion: The use and value of the area adjacent to the property included in the variance may or may not be affected in a substantially adverse manner.

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

Findings:

- The use of "Tourist Home or Cabin" is not a permitted use in the Suburban Residential (SR) zoning district, thus requiring the use variance to be filed;
- The Suburban Residential (SR) zone permits: Historic Adaptive Reuse; Accessory

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Apartments; Accessory Livestock; Accessory Use; Home Occupation; Residential Storage Structure; Single Family Dwelling; Temporary Dwelling; Two Family Dwelling; Group Home Class 1; Wireless Communications Facilities; Artisan Crafts; Real Estate Sales office or Model; or Construction Trailer;

- The site has a single-family dwelling unit;
- There is no substantial evidence the property cannot be utilized under one of the permitted uses listed in the Suburban Residential (SR) zoning district;
- Alternatively, the property is permitted for long term rentals over 30 days, which is classified as a single-family use;
- Conclusion: The need for the variance **does not** arise from some condition peculiar to the property involved.

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

Findings:

- See Findings under (C);
- Tourist Home or Cabin is a low intensity use not permitted on this Suburban Residential (SR) zoned lot;
- Tourist Home or Cabin is permitted in the Agricultural/Rural Reserve (AG/RR), Forest Reserve (FR), Conservation Residential (CR), Estate Residential (ER), Low Density Residential (LR), Medium Density Residential (MR), High Density Residential (HR), and Urban Residential (UR) Zoning Districts per Chapter 802;
- Alternatively, the petitioner could file for a rezone;
- Conclusion: The strict application of the terms of the Zoning Ordinance will not constitute an unnecessary hardship if applied to the property for which the variance is sought.

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

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

Findings:

- See Findings under (A);
- The Urbanizing Area Plan designates the subject site as Rural Residential, which is described previously in this report. The neighboring properties are also zoned Rural Residential in the MUA plan;
- The property does have evident environmental constraints in that it lies in the FEMA floodplain;
- The proposed land use and its “Low” intensity classification in this area is inconsistent

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with the Comprehensive Plan's designation. One purpose of the Suburban Residential (SR) District is to discourage the development of nonresidential uses. The proposed use of "Tourist Home or Cabin" is considered Business and Personal Services, not residential use;

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

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

QUESTIONS FOR STAFF – 2003-VAR-21 – McMullen

Kaczmarczyk: Do we have any questions for staff?

Guerrettaz: I have got one Rebecca. This is Bernie. When you were in the area and you happen to notice that there might be some type of issue with this property or this home what was that issue when you were nearby?

Payne: We were looking at something else in the vicinity and it caught our attention that perhaps the house is being rented.

Nester Jelen: Bernie, there are a few Tourist Homes in this area so it was also like a general Airbnb review that we sometimes have to do. We try not to go looking but if something is immediately adjoining something else that is a complaint we have to follow up on it.

Guerrettaz: I understand. I was just curious if there were trash and litter and cars lined up to the road or something, just curious.

Payne: No, none of that on their site. Not at all.

Guerrettaz: Ok, good. Are there other tourist rentals in this area that are permitted?

Payne: There is one other permitted nearby and it is permitted due to grandfathering.

Guerrettaz: Ok, that is all that I have got.

Sorensen: I have a question. This is Vicky. Do they advertise this as a Tourist Home or how do they get people to rent?

Payne: I believe it is just advertisement for like a vacation rental.

Kaczmarczyk: Did that answer your question, Vicky?

Sorensen: It did.

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Kaczmarczyk: Anymore questions for staff?

Nester Jelen: I see some petitioner questions Mary Beth but we will get to them in just a second.

Kaczmarczyk: Ok.

Guerrettaz: Have there been any, this is Bernie again. Have there been any complaints by neighbors or by the Porthole maybe, I don't know?

Payne: When this case was noticed in the newspapers we did actually and the petitioner put up the notice sign in their front yard we did get some neighbors calling in to ask about the situation and they submitted a remonstrance letter, which should be in your packet.

Guerrettaz: Right, but no complaints prior to this becoming a petition that people were maybe seeing this as a nuisance?

Payne: Not that I am aware of.

Guerrettaz: Ok.

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

PETITIONER/PETITIONER'S REPRESENTATIVE – 2003-VAR-21 – McMullen

Adams: Yes.

Kaczmarczyk: Can you state your name?

McMullen: Hi, dad. Can you read my letter please?

Kaczmarczyk: Hold on. Can one of you please mute? Ok, Elizabeth, state your name and raise your right hand please. Do you swear to tell the truth and nothing but the truth?

McMullen: (inaudible)

Kaczmarczyk: We are having a little trouble hearing you.

McMullen: Ok, can you hear me now?

Kaczmarczyk: That is much better, thank you Elizabeth.

McMullen: My name is Elizabeth McMullen and I do.

Kaczmarczyk: Ok and what would you like to tell us today, Elizabeth?

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McMullen: I apologize. Number one; I am not a speaker so I should be thankful for a Zoom meeting (inaudible). This has been a family project for several years and we have all become very sentimental about it and this whole situation put us in a financially difficult position. I would like, if it's ok, to read this letter. I might not read it in its entirety and there are a couple of specific things within the letter that I would like to highlight. To the members of the Monroe County Planning Department and to whom it may concern; we re requesting a zoning variance to be allowed to be allowed a short-term rental....

Nester Jelen: I am sorry but we can't hear you very well. I am sorry.

McMullen: Can you hear me now? Is this better?

Nester Jelen: Yes.

Dayton: Quick note, it is going to be best if you speak very loudly and very slowly.

McMullen: We are requesting a zoning variance to be allowed short-term rentals in our home located at 8935 East Southshore Drive Unionville. When we purchased our home in 2018 our desire for the property was to use it as a family vacation destination, a "staycation" spot where friends and family could, sorry this is hard to read like this, where friends and family could gather by the lake and around the campfire to decompress from our busy lives. A dream was hatched back in early 2000 while photographing the early morning steam rising from beautiful Lake Lemon. A dream that one day we would have a home away from home there to enjoy ourselves. We live in Brown County so a stone's throw away from Lake Lemon. We spent time frequently driving to Lake Lemon to do photography and found the lake to (inaudible). In 2018 an opportunity presented itself for a family venture to occur. We weren't entirely sure how it would work. As grandparents we are preparing for retirement and a daughter who was still in student loan debt and knee deep in diapers but we took a leap together and promised to make it a fun and bonding family effort. We believed after researching the local, the other local short-term rentals and at the time there were many at Lake Lemon and our realtor never mentioned that short-term rentals aren't allowed. We knew that House Bill 1035 had passed in the State of Indiana allowing for short-term rentals and it was ignorance in short that we did not know that Lake Lemon did not fall under that umbrella of the state law for short-term rentals that had passed and no one told us that. Our realtor did not mention it and we were unaware and that is our mistake. We should have checked. But that is what happened from that standpoint. We believed after researching the local, I am really sorry this is hard to read, after researching the local short-term rentals financial comparisons at Lake Lemon and Nashville and Bloomington that if we could rent weekends only through the high season that we could take on the mortgage and upfront investment without seriously jeopardizing those family financial planning for the future. We deeply regret not more thoroughly investigating the surrounding ordinances and our failure to understand that legislature introduced in 2018 to the State of Indiana was not for sensitive location. When we purchased the home we spent a significant amount of time and resources in making sure that the home's safety was what it needed to be in order to protect our guests as well as the loved ones in our own family. We added railings at multiple locations at steep grade and repaired and strengthened the existing railing. We made repairs to the grade and the drainage system to keep water away from the foundation of the home. We have added a carbon monoxide detector. We have strict rules in place limiting occupancy of

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the home regarding noise and parties and we have installed ring security cameras to protect both ourselves as well as our neighbors as there have been local break-ins next door to us. We have a book of rules and recommendations and we ask all guests to read and abide by. We have had a complaint from our neighbors on one occasion that our guests were not staying within our property boundaries and had wandered onto a neighbors dock unknowingly. The landowner contacted us and we immediately got back with them with a detailed property outline that our surveyor had done so that they could clearly see. Following that I immediately went online and I updated the property boundaries. There is actually a marker where we have an easement that goes almost the entire length of that small canal and there is a cement post at the end of it. I took pictures of that post and I updated the website that we were renting on to show renters they could not go past this marker. We also took the surveyors map that we had and framed it and we hung it in the house so that our renters would know where our property boundaries were and since that time we have never had a complaint made to use that anybody had trespassed. We have never had the police called on our home. We have never had a neighbor reach out to us subsequently. I actually spoke with that neighbor's grandson. He came to our house one day when I was there and told me about the interaction that my guest had also discussed with me. I extended my apologies to him. I told him that all of the steps I had taken to ensure that our property boundaries were made clear and I gave him my personal cell phone number as well as my parents as well as my husband's number and I asked him if you ever have any issues whatsoever please contact us and we would take care of it immediately. But apart from that we have never had any further neighbor complaints and that was probably 4 months after we purchased the home. So, it was more than a year and a half ago at least. We have attempted to beautify the home as well as the neighborhood by repainting and siding the home, adding shutters, window boxes with flowers and staining the entire deck and all of the wood accents in the back of the home. We have strict rules that we share with our guests to try and protect them from having any problems with our neighbors. We feel that with an extremely low occupancy that a burden of a short-term rental is less on the septic system than a small family living in the home full time would be. Also, I would like to interject that our septic system is brand new. It was just placed just prior to our purchasing the home. We have tried to give back to our community and our neighbors. We have recommended the Porthole Restaurant and provide every single guest that stays in our home with a \$5.00 gift certificate to apply to a meal at the Porthole so that we can encourage people to visit some of the local places. We have brochures of many local businesses in both Brown County and Bloomington for our guests to peruse as well as a link on the guidebook that we provide online. Co-owner Doctor William Adams has been an Assistant Professor at Indiana University since 1974 and several of his children have graduated from Indiana University and one enjoyed the Little 500. Images of which are in the basement walls. We love the surrounding communities of Bloomington and Nashville. Our hearts desire has always been to be a good neighbor and to give back to our community. One financial goal for our home was to dedicate a percentage of our income in establishing nonprofit foundations (inaudible) sorry, (inaudible). If we are no longer allowed to have short-term renters it will be a financial crisis to this family. We will have to sell the property and we will lose our dream that we had hatched together to be able to enjoy the property. We feel that totally disallowing short-term rentals is to the detriment of Lake Lemon as a whole. Many people would benefit from short visit to see the beauty of Lake Lemon. There are no commercial hotels available at the lake. (Inaudible) Our guest by and large are extremely respectful and appreciate the opportunity to visit the lake. Lake Lemon has been advertised and promoted by the Indianapolis Star mostly as a vacation designation. If there are no short-term rentals allowed this is nothing but a pipe dream. Allowing short-term rentals

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invites a new generation of visitors to contribute to the local economy. Our continued hope is that you will please allow us continue our minimal short-term rental schedule for the foreseeable future. We hope that eventually our rental schedule will be completely available when we are unavailable ourselves to enjoy the property. We love the home. We have put many hours and sacrifices to make our tourist cabin a safe and comfortable location for ourselves, our guests and for our neighbors. We would love an opportunity to continue to be a part of this special community and we thank you very much for your time and consideration of our requests. There were just a couple of things extra that I wanted to note. One is that the entire time that we have owned this property I have had on our listing that required every guest to ask permission to bring any kind of water craft to our home, whether it be motorized or a kayak or whatever, but they had to ask permission first and in the 2 years that we have owned this property we have only had one guest ever bring a boat, once. There was only one guest who has ever, ever, ever brought a motorized boat, which is surprising because it's on Lake Lemon but that is the honest to goodness truth. One thing I would like to say is that I really wish that we could show you before and after pictures of the property so that you could appreciate all of the blood, sweat and tears and time and energy and effort that had gone into fixing this place up. I mean, my family we camped in the living room while we painted the bedrooms ourselves and painted the whole outside. Like I said, we were repaired all of the woodwork and I think if anything we have improved the property value which I would think would also improve our neighbors property value. I am committed to both my guests as well as my neighbors and I am truly saddened there was a complaint about this and I just wish they knew that had they reached out to me that I would have taken care of it and I would always be accessible to my neighbors. I will give back to Monroe County in any way that I can. I think that is it for me.

Nester Jelen: Mary Beth and other board members if you would like me to implement, I know there is quite a few people that want to speak, if you want me to start the timer for 3 minutes I have that ready.

Kaczmarczyk: Ok, thank you so very much. I appreciate that Jackie. Anyone have any questions for the petitioner?

Guerrettaz: Yes, I have a quick question, Mary Beth. Just asking the petitioner have they read the deed and are they familiar with the deed restrictions that accompany the property?

Adams: This is Doctor Adams, I haven't been sworn in yet.

Kaczmarczyk: Are you going to be able to answer this question, Doctor Adams?

Adams: Yes, I can. I did not....

Kaczmarczyk: Let me swear you in first.

Adams: Ok.

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

Adams: I do.

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Kaczmarczyk: Thank you. And you are to the petitioner, Doctor Adams, who are you?

Adams: I am one of the owners of the property.

Kaczmarczyk: Ok, thank you.

Adams: And Elizabeth is my daughter.

Kaczmarczyk: Ok. I just wanted to make sure we knew who we were dealing with here. Bernie asked if you guys read the deed when you bought the property.

Adams: I did not read the deed in detail, no.

Kaczmarczyk: Ok, you didn't read the exception on the deed then?

Adams: No, I did not see that, that there was an exception with that.

Kaczmarczyk: Ok, does that answer your question, Bernie?

Guerrettaz: Yes.

Kaczmarczyk: Ok. Alright, any more questions for the petitioner? Would anyone else like to speak on behalf of the petition?

McMullen: Can I ask a question, please?

Kaczmarczyk: Sure.

McMullen: What is in the restriction within the deed, specifically? I mean, we, the one other thing that I was going to say was I am glad this was brought up because we have a dock on the canal. The dock was not photographed in any of those pictures. Is the deed question in regard to the canal access?

Kaczmarczyk: It is general restrictions on the neighborhood. I assume the petitioners have a copy of this deed. Is that right, staff?

Nester Jelen: It is located in the packet, right Rebecca?

Payne: Yes, it is.

Nester Jelen: Ok, I will find out what page and I will report back.

Kaczmarczyk: I have got it at page 149 and 150.

Payne: 149 and 150, yes.

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McMullen: And that is in the packet?

Payne: Yes. It was submitted as part of the remonstrance letter.

Kaczmarczyk: Have you read the remonstrance letter?

McMullen: Yes, I did. I don't know that I fully understood quite a bit of that, though.

Kaczmarczyk: Ok. I will ask at this time, is there anyone else here who wishes to speak on behalf of the petition?

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Wheeler: I do.

Kaczmarczyk: Can you state your name and raise your hand and I can swear you in?

Wheeler: My name is Camille Wheeler.

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

Wheeler: I do.

Kaczmarczyk: Thank you.

Wheeler: I just wanted to get on here and say that I myself was personally a guest, a renter at the petitioner's property for New Year's Eve and I just wanted to speak on their behalf and say that they are the absolute best renters. They were very strict on their rules. They had strict guidelines on how many guests we were having, what exactly we were going to be using the property for. They provided a binder of rules and guidelines. They had pictures of their property outlined and they were able to be contacted within minutes. I had a phone number of both Elizabeth and her husband and I believe they also listed the phone number of Elizabeth's parents and like Elizabeth mentioned they also recommended the Porthole Inn to eat at and many other places in Brown County. So, I just wanted to say that they are excellent. Our stay was excellent and we just loved the place. That is all.

Nester Jelen: You are muted, Mary Beth.

Kaczmarczyk: Sorry about that. Does anyone have any questions for Ms. Wheeler? Thank you. Does anyone else wish to speak on behalf of the petition?

FURTHER SUPPORTERS – 2003-VAR-21 – McMullen

Tala: I wish to speak but I wish to speak neutrally because I am both sides in a way. Because the 3 people that wrote the letters are very close friends that I love. I have known for 37 years.

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Kaczmarczyk: Can I swear you in real quick?

Tala: Yes.

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

Tala: I do. My name is Sara Gale Tala. In 2000 I started working on having guesthouses here in Lake Lemon. In 2001 I opened my guest houses and I turned full time rentals into my guesthouses. I currently have 2 still. Where her guesthouse is located is it adjoins the Porthole Restaurant and the Sailing Club and the Sailing Club has tons of traffic. The Porthole has tons of traffic. I lived directly across the street from the Porthole. My house was in the picture. I have seen people wildly on the property doing terrible things and they were the Porthole people and not her guests. I have never seen or heard any problems with her quests. But I have seen people at the Porthole that park in the driveway and run across the property when it's not being used. Now, my house which is 3 houses down from hers or 4 houses, my main biggest guesthouse, was for 9 years a full time rental. I rented to 3 computer nerds who were 25 years old and then one would move out and another one would move in for like 8 or 9 years until I had like always had 3 25 year old men and they wouldn't take care of the property. They wouldn't mow the lawn. They leave trash all over the yard. No matter what I do, I have lots of renters I have been a landlord for 40 years, no matter what I do I can't get my renters to take as good of care of the property as I do. When my house became a guesthouse, now my lawns are immaculate, there is no trash and there are very few people in there. I was in a fight in 2008 with the Zoning Commission of which it was the same people. They made a lot of statements about guesthouses that just weren't true. I have been here at the lake for 18 years. I have a lot less use of my septic system, a lot less damage on the property, I don't understand why this zoning was changed and luckily I am grandfathered in. I realize that my neighbors have concern but they would have a worse concern if they had those 3 guys that were renting my house back in the house because they would have all the problems whereas a guesthouse it is treated well. It is a big difference too that she adjoins the Porthole, which is a big, loud mess all of the time but they are grandfathered in and the Sailing Club which has nonstop cars going back and forth. So, she is almost like in a commercial area anyway I think if anything it adds to any other houses being sold in the neighborhood because is going to be more better cared for then when she turns it into a full time rental. So, I don't want to go against anybody. I wish somebody had met with me about it. I wish the Zoning Department would meet with me. I have 18 years' experience. Last time in 2008 the Zoning Department made a lot of decisions about guesthouses without even knowing the experience that people had. I wish I had more time to talk but my time is up.

Kaczmarczyk: Thank you. Does anybody have any questions? Ok. Is there anyone else here who wishes to speak on behalf of the petition?

Adams: Yes, this is Doctor Adams. I just wanted to say that we have really spent a considerable amount of money and effort as Elizabeth has already said. We have improved the safety of the property. Even if somebody from the Porthole should wonder over before there is a steep bank going down to the canal and someone that was inebriated could easily go over and fall down into that canal over a lot of rip rap rocks and we put retaining walls down through there. We have improved the drainage to the area, have cleaned up the property, made a fire pit for people to do s'mores outdoor and just enjoy the vista. We are really concerned about the property because we

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stay there as well as part as Elizabeth as said it's for family and not just the short-term rental. We really don't rent it that much. It doesn't get that much use when it's rented. The question came up how is it advertised and it has been through Airbnb just online, the online rental place. We have the privilege of having students' parents come in for graduation and that sort of thing. So, we really feel like anniversary, birthdays and we limit the number of guests. We have the ring door bell system so we can actually know who is coming and going and we monitor that. If you go by there now it is mowed. It's clean. It always looks good and we would just love the privilege of being able to help share some of the financial cost of this property and we really could use that right now.

Kaczmarczyk: Ok, thank you sir. Any questions for Doctor Adams?

Guerrettaz: Doctor Adams, this is Bernie. How have you improved the drainage on the property?

Adams: Well, the gutter system was over just came out and was washing and eroding down into canal, so re-routed the gutters. We buried that flexible pipe and took it over toward the septic field where the drainage went around to the north side of the septic field and would naturally come out and there is an area where we have rip rap going down that was already there actually and so it goes to that area. David Carrico owned the property, built it new on an old foundation, actually the foundation was grandfathered in and that was the only reason he was able to do that property and did a new build on it. It was completed I believe around 2016 because everything in the home is new, the furnace, the air conditioning, the hot water, everything including the septic. They did a very nice good on getting that septic field put in and getting the right kind of drainage. We don't have any water stagnating on the property and we don't have any runoff, it is not washing any of the soil away like it was. So, we feel like we have really improved that.

Guerrettaz: Mary Beth I have another question.

Kaczmarczyk: Go ahead.

Guerrettaz: This is Bernie again.ms. McMullen or Doctor Adams, how many nights a year or how man days a year and if it's in the packet I missed it. I apologize if this is redundant, but how many nights or days a year do you spend on this particular property using that particular structure a year?

Adams: As far as our use?

Guerrettaz: Yes.

Adams: Well, I am guessing the rental, the rental, Libby you could perhaps I am guessing maybe 30 days of rental.

McMullen: Our personal use, I would say it depends on the time of year for us as well. In all honesty, our entire intentions behind buying this property was for us to use. My parents just became involved in their 25th grandchild. I am one of 8 kids and our dream was that we would all be able to sit on the deck at Lake Lemon ...

Guerrettaz: I understand it's a beautiful dream but what I am asking is how many days do you

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believe that you spend on the property in a year as a family? Your immediate family.

McMullen: I guess what I need to cut to the chase is we have not had the chance to spend the time there because first of all we have a lot of little kids that don't swim and that sort of thing. So, right now I would say my personal family we go down there and we spend a long weekend about every two months probably. I would say as our guest occupancy goes we really don't start having many guests, IU graduation weekend is usually pretty much a given and after Memorial Day and through October would be the high season and then I would say like you know we get busy with our own families at the holidays and stuff so we are not there much at all during the winter time. The place virtually stays empty. Our plan is if we can't have a short-term rental we are going to do a 30 day long-term rental. There is going to be a lot more traffic at the house than there is now. There is going to be a lot more septic use than there is at our house right now. We don't want to do that but we don't have a choice. That is the only way we are going to be able to pay the mortgage on this place. Right now our occupancy is not good. We are taking a loss on the place every year but that was ok because and it was an investment for the future. We are not using it ourselves but as our kids get other, I mean, I would like to be down there. Every family out of my family's 8 kids we would split up each weekend. Everybody has their weekend and if everybody passes on their weekend then we will rent it. That is our long-term plan but for right now we were just trying to come up, I was just trying to make sure make sure that my down payment and what I invested in outfitting the place that both of those kind of initial investments and the first 2 years of mortgage payments were covered by the rental and then whatever...

Guerrettaz: Right, Ms. McMullen I think that answers my question. Thank you.

McMullen: Thank you.

Tala: Can I make another small statement?

Kaczmarczyk: Real quick, yes.

Tala: Like I said, I live across the street from the Porthole and my rental house, my guesthouse is behind the Porthole, about 3 house down from hers. I also have it as a guesthouse so that my family that lives in the area uses it. I walk down in front of her house almost every single day from May 1st to November 1st. I travel a lot in the winter so I am not down. But I walking down and checking on my house and using my house every single day even when someone is there I go down and like I wanted to say, I have never, ever seen any problems there. Sometimes I walk down at 11 o'clock at night and 12 o'clock at night just checking on things. I am like eyes and ears of the neighborhood and I am around all of the time to see what is going on and mostly it's the Porthole that makes a lot of noise, causing a lot of problems and fights in the neighborhood and that is the problem that we have in the neighborhood.

Kaczmarczyk: Thank you. Is there anyone else here that would like to speak on behalf of the petition? Ok, seeing none. Is there anyone here who wishes to speak against the petition?

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Kaczmarczyk: Ok, who is first?

Clarke: I would be willing that to.

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

Clarke: I do.

Kaczmarczyk: Alright, thank you and state your name again.

Clarke: Barry Clarke.

Kaczmarczyk: Proceed sir.

Clarke: I am the resident that lives across the canal and lake from this particular property and it was my parents that subdivided these lots and put the deed restrictions in place on these lots. They did so because they wanted these lots all around this property, all around this canal to be residential lots. To be homeowners the people that we know will care and respect their neighbors and it sounds like the people that bought this, though I have never met them, are those kind of people. These seem very respectful. They seem to really care about the property and they have done a lot of work to it. But my fear is based on what I just heard that they are looking to rent this lot to make up this property difference and that is completely contrary to purpose that was set out when they divided these lots. It speaks to specifically the deed restrictions that are in place on that property that says it can used for no commercial purposes whatsoever, which is Item #1 of the deed restrictions and also Item #4 of the deed restrictions where, I misspoke there, Item #7 where no noxious or offensive activity can be carried on which would be detrimental or a nuisance to the neighborhood. I am paraphrasing there. I know that they say there has been no other boat traffic up there, I don't know who is there when they are there but there has been a lot of boats going up and down the canal into that home. They may be the renters or they may be people visiting the renters. I don't know but you are supposed to have idle speed going up the canal and they come in to fast and they wash the canal walls. In fact my grandchildren were in the water and they had to quickly get out of the water away from a boat coming in and so, we have just had problems with that. I know there are 2 other people that sighted on the remonstrance letter and signed it later that wish to speak as well regarding problems that they have had with the rentals that have taken place already and this was with guests of a very limited rental schedule compared to what they are expecting in the very near future if this would be approved. That is my position in it. If either one of those people are not on because I know this went a lot longer than we were anticipating, I would be glad to speak for them. But I would like Sherry Peterson of Kathy White both to speak as well.

Peterson: And I am Sherry and I am here.

Kaczmarczyk: Are there any questions for Mr. Clarke?

Guerrettaz: Yes, Mary Beth, I am sorry. This is Bernie again. Dave are you still on? Schilling?

Schilling: Yes, I just had to unmute, Bernie. Sorry.

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Guerrettaz: Got you. My question is I don't know that this description necessarily pertains to this property. We don't have anything that shows that and to go through that and determine that that is not our job. But say this deed and these deed restrictions to accompany this property. Is that something that we would consider in our determination or is that a civil matter that neighbors would have to take up with the petitioners in order to enforce?

Schilling: Yes, that is a civil matter.

Guerrettaz: Ok. Thanks.

Schilling: It is a private contractual matter.

Guerrettaz: I understand. Ok, that was the only question that I had.

Kaczmarczyk: Thank you David. Any other questions?

Adams: Could I clarify something?

Kaczmarczyk: Yes.

Adams: This is Doctor Adams. We don't have any plans to increase the amount of rental. In fact, we have intentionally restricted. For the insurance we had to state the maximum number of days that we intended to rent the property and I believe that was actually 60 days. But we have not intention of really renting it that much ever.

Kaczmarczyk: Ok, thank you. Is there any else here who wishes to speak against the petition?

Peterson: I would, Sherry Peterson.

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

Peterson: I will. I do.

Kaczmarczyk: Thank Sherry. You may proceed.

Peterson: Ok. I would like to back up before I start with what I had to say with the gentleman's last comments about not intending on renting it very often and that for insurance purposes they needed to put 60 days, is what they put. But that contradicts everything that was being spoken about earlier and with Elizabeth and the financial burden that it has put on them. It seems to me that they would want to rent it 365 days a year if they are in that big of a financial situation over the money that they spent. The place is lovely. The place is beautiful. That is not the issue here. They keep it up better than I live at 8890 and it looks better than my place. I am not saying anything about how this lovely house has been remodeled. If you would look at that last slide picture where it showed the lots and they were speaking of the Bloomington Yacht Club. I and my family bought in the 50's when the lake was going in and they bought up on Sunshine Drive and then this lot

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down here with, actually there are 2 lots. One is on the channel that is a 75' by 25' foot like. Can you see in that last picture that you had of the property, the property pictures? There is a clear lake lot property with nothing but a little shelter house and then to the west of that that is landlocked. Everything here is landlocked. Yeah, there we go. So, the Sailing Club where that red building is has absolutely 0, 0, 0 other than I think they might drive their driveway they might have to drive through that easement to get to their place. I own, I am landlocked, parallel with the Bloomington Yacht Club and I own that lot all the way down to the shelter house that I don't know if you can see right with those 2 campers and then if you past, yes, right there where that pink line is that ends theirs, there is a 75' foot line by 25' foot lot that is totally separate and totally mine. It doesn't have anything to do with the Sailing Club so I don't know why the Sailing Club was even brought up on that. Because all of that land, little "I" shaped land that is mine and a couple of other people's names are on a couple of deeds over there. As far as the trespassing, well, I hate to call it trespassing but we have had more than one occasion of renters go down there on our property. I don't know if they can control it. They act like they are very strict but they do come onto that property because they want to get in the lake and we have ran more than one people off, not just a onetime occasion. The only other thing that I want to say because my time is up is when they purchased this place I spoke with I guess it was the Carrico family and I don't know how many families it has gone through since David Carrico but he as the guy that was from Nashville and coming over. It was going to be a totally family thing and my kids and you know it was never, ever, ever discussed to be an Airbnb, which is how they advertise. Id dint know that until this all came up that they were even doing an Airbnb until some problems have come up and that is all that I have to say. I think.

Kaczmarczyk: Ok, thank you.

Adams: Could I respond to that, perhaps?

Peterson: You can as far as I am concerned. Who is speaking?

Adams: This is Doctor Adams.

Peterson: Oh, sure.

Clements: I would like to request that Doctor Adams has had sufficient time to speak and that we should just move on. Thank you.

Kaczmarczyk: Thank you. Is there anyone else here who wishes to speak against the petition?

Adams: I would like to speak. I am Sasha Adams and I am one of the co-owners of the property and I haven't spoken.

Kaczmarczyk: Are you speaking for or against the petition, ma'am?

Adams: I am speaking for but I just want to make a clarifying statement is all.

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

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Adams: I certainly do. I swear to tell the truth and nothing but the truth.

Kaczmarczyk: Thank you, ma'am.

Adams: We are limited by Airbnb how many days a year you can rent even if you wanted to. I mean you are not allowed to by the definition of an Airbnb you can check those kind of facts out. IT was never our intent to pay for the whole place by renting it. We are simply trying to recover some of the investment that we put in. We had a brand new retaining wall put on the back side of the house that was like almost \$10,000 to do because all that was there was even though the place was finished very well on the inside, the outside is where it lacked a lot of attention and we haven't spent very much time there because truthfully we have worked on it ever since we have had it. It doesn't rent at all in the winter. The New Year's thing, on a holiday, yes and maybe one rental during the Christmas season and then it sits empty for the most part. Of course this year has been a low year anyway. So, the fact of renting a lot is never going to happen. All we are trying to do is supplement what we put in there with enough investment to offset some of the costs that we have spent and as our kids get older, my daughter had mentioned there are 8 children in the family. They are all married and they all have children and most of their children are young. But I have no doubt that they will spend time there as we will just for a family gathering or a partial family gathering. We often do that where it's just one or two families. It is very seldom and anyone who has children know this you can't get everyone together even if you want to. But that is pretty much it. It was never thought that this was going to support it and frankly the thought of renting is something we have no time to do to be honest. Libby does do the booking. But it was never with the intent of being a landlord. It was simply to help us finish this off and do it.

Clements: I have a point of order that I would like to assert. Number one; we have entertained arguments in favor of the petition and we are now in the process of hearing the statements against the petition and I don't think it's fair if after every statement against the petition the people for the petition have an opportunity to respond. I would like to just state that as a point of order and see if we could go forward. Thank you.

Kaczmarczyk: Thank you Margaret. Point noted.

Guerrettaz: I concur.

Kaczmarczyk: Anyone else like to speak against the petition?

Nester Jelen: Kathy, you are on mute. Ok, there you go.

White: Ok.

Kaczmarczyk: Ok, I need you to state your name.

White: My name is Kathy White.

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

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White: I do.

Kaczmarczyk: Thank you.

White: This matter was brought to my attention. We also had no idea this property was being utilized in this manner. It came as a complete surprise and actually answered a few questions as to why there had been large seemed like because of the noise level and the partying to 1 or 2 o'clock in the morning that kept us up and was how we decided that this was not going very well, along with the behavior in the channel as Ms. Barry mentioned, boats going in and out to fast. That is portion that we would like to speak to was the noise level and the partying and activities like that.

Kaczmarczyk: Ok, thank you. Anyone have any questions? Anyone else wish to speak against the petition? Seeing none. I call for a motion, please.

ADDITIONAL QUESTIONS FOR STAFF – 2003-VAR-21 – McMullen

Guerrettaz: Mary Beth, let me ask this question. Now that we are through the public that is for or against in a reasonable statement or amount of time I would like for the petitioner to be able to rebut or not necessarily in something in closing but if there were facts that were put out that that can contradict in a reasonable manner I think it would be ok for them to do that.

Clements: I would like to say that I would like an opportunity for the members of the Board of Zoning Appeals to have the opportunity to now speak amongst ourselves about the issues at stake.

Guerrettaz: Either way, I don't have a problem with that. I just think that there have been remonstrators and the petitioner should be able address comments that they may not feel is accurate.

Clements: Ok. In terms of something that is concerning me as a member of the Board of Zoning Appeals is I think its irrelevant how many days they intent to rent the property and how many days they have listed on their insurance that they intend to rent the property. I think the question is are we allowing this property a rental property? Because those details can change in the future no matter what intention of the current owner is and I think if we do permit this use and this variation that we must be prepared that will be a rental property. The intentions as well stated as they are and as well intended as they are not really germane at this time. So, I think that we as members of the Board of Zoning Appeals must keep that in mind. Thank you.

Hosea: I would like to say something. If we approve this will we be having the same issue before us again and if so, how much? What other properties?

Sorenson: I would like to say something. Are we talking about a rental where somebody rents the house for an extended period of time or are we talking about this being a Tourist Home and Cabin to rent on the weekend?

Kaczmarczyk: Under the current zoning they would be allowed to do long-term rentals. It is a vacation rental.

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Sorenson: So we have would have to distinguish that, though wouldn't we?

Nester Jelen: It is distinguished in the code, Vicky. 30 days or longer is long-term and less than 30 days is a short-term rental, so Airbnb is typically a short-term.

Sorenson: Ok, and they would have to acknowledge which way they are going. Wouldn't they?

Nester Jelen: One is permitted and one is not. I want to go back to William's question, if we approve this will we get many more requests in the SR zoning district, and Dave step in here. But we are not setting a precedent here. This is specific to this property to allow for the use to happen here. But there are a lot of other SR zoning district lots in the area that would benefit if there was a change. But the zoning would still say the same so it would still not be permitted in SR unless people rezoned or sought a Use Variance.

Kaczmarczyk: Thank you. Anymore questions?

Wilson: This is Larry. I just wanted to comment on, follow up on what Jackie said. It doesn't create a legal precedent, however, I think we may even have another variance that is in the queue that is in this same general area. So, there is a question of legally every case is unique and just because you grant a variance one time doesn't mean you have to grant it the next time. However, I think you can see the practical problem of consistency. If somebody comes in and has the same set of circumstances in the same neighborhood, some zoning district, same size of lot, etcetera, we like to be consistent, I will put it that way.

Kaczmarczyk: Thank you Larry. Could I entertain a motion, please? Anybody?

FURTHER QUESTIONS FOR STAFF – 2003-VAR-21 – McMullen

Guerrettaz: I can do it. I am looking for my title sheet here. Excuse me. There are a couple of things that I am compelled with and that is upkeep of the property has been done very well. Two; it's in a commercial area with the Porthole and with the Yacht Club adjacent or fairly adjacent. We have heard some very elegant neighbors and informed neighbors talk about issues that have been in this area and according to the petitioner those cannot be necessarily pegged on the inhabitation of the house because of the other uses on properties immediately adjacent to this. I am not worried. That was a great question about the precedence but I never worry about that because every site is unique and the deed restriction, I think everybody should read their deed. Again, that is not something that overly concerns me as a person on this board. That is kind of where I am coming from for my motion. **In case 2003-VAR-21, I move approval of the request of the Chapter 802 Use Variance Tourist Home or Cabin at 8935 East Southshore Drive, parcel number 53-01-35-300-050.000-003, I move approval based on practical difficulties.**

Kaczmarczyk: Is there a second?

Hosea: I will **second**.

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Kaczmarczyk: Larry, please call the roll.

Wilson: I just want to get clarification from Dave regard to the standards for a Use Variance. I believe its undue hardship rather than practical difficulties. Is that correct?

Schilling: That is correct.

Wilson: Bernie, if you feel comfortable making a motion saying that based upon a finding of undue hardship as opposed to practical difficulties.

Guerrettaz: I do and that is what I intended to do, thanks Larry. **I base my motion based on the staff report and undue hardship by the petitioners.**

Wilson: Ok, I will go ahead and call the roll now. The vote is on a motion to grant the Use Variance for 2003-VAR-21, McMullen Use Variance from Chapter 802, to allow a Tourist Home in an SR zone on this site. A vote in favor is a vote to grant the Use Variance. Mary Beth Kaczmarczyk?

Kaczmarczyk: Yes.

Wilson: Vicky Sorenson?

Sorenson: Yes.

Wilson: Margaret Clements?

Clements: No.

Wilson: Bernie Guerrettaz?

Guerrettaz: Yes.

Wilson: William Hosea?

Hosea: No.

Wilson: The variance and if I am incorrect here 3 to 2, the motion is approved.

Kaczmarczyk: That is correct.

Wilson: The Use Variance is granted by a 3 to 2 vote.

The motion in case 2003-VAR-21, McMullen Use Variance from Chapter 802, in favor of approving the variance, due to undue hardship, carried (3-2).

NEW BUSINESS

10. 2003-VAR-22

Nelson Front Yard Setback Variance

One (1) 0.16 +/- acre parcel in Perry Township, Section 6 at 2009 W Cory Dr.

Zoned RS(AIFA). Contact: rpayne@co.monroe.in.us

BOARD ACTION: Kaczmarczyk introduced the petition.

STAFF ACTION:

Payne: Hello. Ok, let me organize here. This is a Front Yard Setback Variance request for a property located at 2009 West Cory Drive. It is about 0.16 acres and it is in Perry Township, Section 6. Jackie, next slide. The current zoning is RS (AIFA) Areas Intended for Annexation. This is a zone that we administer. I am sorry, a train went through my backyard, so I am distracted. Next slide, please. What the petitioner would like to do is build some covered steps on the front of his house so that he can get to and from the garage more conveniently and especially more safely in inclement weather. The building currently sits right at the property line so the proposed porch that they are wanting to put in encroaches in the Front Yard Setback by just a little bit, that is the

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need for the variance. Here we are looking at the slope map. There is some slope on the property, however where the proposed porch is, it is not impacted by slope. Site conditions again there are some contour on the property but it's less than 12 percent and nothing that the porch would impact. The Comprehensive Plan designates this as MUCA Mixed Residential. This is a slide showing some of the zoning details Residential Single Family, which is what this property is zoned. You can see here that the minimum front setback is 15' feet from the right of way. Here I wanted to show you what the property looks like. The top left photo is looking south. You can see the existing set of steps and a small walkway that leads to the attached garage. The bottom left photo is looking at the house from the street. The center picture I wanted to include in the presentation because you can see the petitioner's neighbor to the right has a similar deck already built on their house and I think it's just a case of this house and this lot being slightly at an angle that puts the home right at the setback line. The bottom picture is just the front of the house looking north. Here we have the site plan. You can see the proposed deck coming off of the front and again where the existing building sits at the setback line. I also wanted to point out on this slide that they are doing in addition to the front porch they are doing an addition off of the back of the garage but that does not need any kind of variance. To the right we have an image of the petitioner's letter just indicating that they are wanting to build the front porch steps for easy access.

Nester Jelen: Rebecca, I just wanted to clarify that the setback is 25' feet requirement, just to clarify for the BZA.

Payne: Yes, that is correct I am sorry, I kind of blew through that. Staff recommends approval of the Front Yard Setback Variance, based on findings of fact and subject to County Highway and Drainage Engineer reports. Are there any questions?

RECOMMENDATION

Staff recommends approval of the front yard setback variance based on the Findings of Fact subject to the County Highway and Drainage Engineer reports.

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 remove the existing concrete stairs and sidewalk and replace it with an 8' x 19.6' covered front porch that encroaches into the front yard setback by roughly 8';
- The petition site is zoned Residential Single Family District (RS AIFA) and requires a minimum front yard setback of 25';
- The petition site is 0.16 +/- acres;

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- The parcel is platted in the Cory Lane Estates, Lot 3;
- There is no evidence that the proposed porch with steps is located on sensitive lands;
- There is no known karst on the property;
- There is no evidence that the porch with steps would obstruct a natural or scenic view;
- Conclusion: It would not impair the stability of a natural or scenic area.

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

Findings:

- See findings under A (1);
- The parcel is addressed off of W Cory Lane, a Local road (50’);
- The parcel is serviced by sewer;
- The proposed porch and steps location would not interfere with sewer or water;
- Conclusion: It would not interfere with or make more dangerous, difficult, or costly, the use, installation, or maintenance of existing or planned transportation and utility facilities.

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

Findings:

- See findings under A (1) and A (2);
- Surrounding use is single family residential;
- Smaller front yard setbacks are associated with dense zoning standards;
- The proposed porch location cannot easily be relocated since it is intended to align with the front entrance; the existing home butts up to the setback line; building a smaller porch that does not encroach would defeat the purpose of providing a safe way for the petitioner to get in and out of the front door;
- Other homes on the street have similar front porches;
- 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:

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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 under A (1);
- Nearby uses are single family residential;
- Adjacent properties are of similar size and configuration;
- Conclusion: The specific purposes of the design standard sought to be varied would be satisfied.

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

Findings:

- See findings under A (1);
- There is not floodplain on site;
- The site is not located within an Environmental Constraints Overlay Area.
- The proposed location of the manufactured shed is within buildable area;
- Conclusion: It would not promote conditions (on-site or off-site) detrimental to the use and enjoyment of other properties in the area.

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

Findings:

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

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

Findings:

- See findings under A (1) and A (3);
- The existing house sits right at the front yard setback line;

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- It is not possible to build a porch and steps without encroaching in the front yard setback;
- Approval of this variance is necessary for development of the site;

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

QUESTIONS FOR STAFF – 2003-VAR-22 – Nelson

Kaczmarczyk: Any questions for staff? Is the petitioner here?

PETITIONER/PETITIONER’S REPRESENTATIVE – 2003-VAR-22 – Nelson

Payne: He is here.

Kaczmarczyk: Would you like to speak, sir?

Nelson: Sure, real quick. I won’t make it a long one.

Kaczmarczyk: Let me swear you in, please. Can you state your name?

Nelson: Jabeth Nelson.

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

Nelson: Yes, I do.

Kaczmarczyk: Thank you.

Nelson: I own the property and my grandfather lives there. I am trying to take care of him. As far as the garage, I know you said that, just so I am clear I don’t want to start building anything that I am not allowed to. But the garage, I just need to extend it far enough so that his car will be fit in there. When we bought it we didn’t realize how small that garage was to fit his car in there and there is no entrance inside the garage to go into the his house. So, he has to go outside of the garage and onto the front deck. The deck is not going to be really big. It will really just be covering the concrete steps that we have there now. I am going to create kind of a deck and a ramp for him so he can walk out of the garage getting groceries or his car and really go into there and just try to protect him as he is getting even more older. So, I just wanted to make sure I am on the same page and know what to do. I didn’t know if I could build a roof structure on top of that deck just slightly just to cover over to the garage so he can get in there dry and safe and protect from ice. That is the biggest thing. I don’t know with that. So anything to help with that in mind would be greatly appreciated. Anything at a minimum I am happy to follow along with but that is my ultimate goal

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with him.

Nester Jelen: Just to clarify, this is a variance specific to the porch, the proposed deck, excuse me. The proposed addition to the garage is meeting all of the requirements. So, we can talk with you separately about that one.

Nelson: Ok. The proposed front deck then, I don't know if that is allowing a roof structure in it as well with this. I am sorry. I have had Loren Wood and Joel deal with this more than I have.

Nester Jelen: Sure.

Kaczmarczyk: Any questions for the petitioner? Seeing none. Is there anyone else here who would like to speak on behalf of the petition? Seeing none. Is there anyone here who would like to speak against the petition? Seeing none. I can call for a motion, please.

SUPPORTERS – 2003-VAR-22 – Nelson: None

FURTHER SUPPORTERS – 2003-VAR-22 – Nelson: None

REMONSTRATORS - 2003-VAR-22 – Nelson: None

ADDITIONAL QUESTIONS FOR STAFF – 2003-VAR-22 – Nelson: None

FURTHER QUESTIONS FOR STAFF – 2003-VAR-22 – Nelson

Clements: **In the matter of case number 2003-VAR-22, with the request for a Front Yard Setback Variance, I move that we approve the request, based on the findings of fact and subject to the County Highway and Drainage Engineer reports.**

Kaczmarczyk: I will **second** that. Please call the roll.

Wilson: The vote is on petition number 2003-VAR-22, the Nelson Front Yard Setback Variance. A vote in favor is a vote to grant the variance from the front yard requirements at the residence located at 2009 West Cory Drive Vicky Sorenson?

Sorenson: Yes.

Wilson: Margaret Clements?

Clements: Yes.

Wilson: Bernie Guerrettaz?

Guerrettaz: Yes.

Wilson: William Hosea?

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Hosea: Yes.

Wilson: Mary Beth Kaczmarczyk?

Kaczmarczyk: Yes.

Wilson: The variance is granted 5 to 0.

The motion in case 2003-VAR-22, Nelson Front Yard Setback Variance, favor of approving the variance, carried unanimously (5-0).

NEW BUSINESS

11. 2004-VAR-23 Van Buren Fire Dept. Min. Parking Variance from Chapter 806

12. 2004-VAR-24 Van Buren Fire Dept. Streetscape Variance from Chapter 830

One (1) 1.78 +/- acre parcel in Van Buren Township, Section 32 at 9039 W Hinds RD, 6510 W Center ST, and 6223 S Burch RD.

Zoned Institutional (IP). Contact: dmyers@co.monroe.in.us

BOARD ACTION: Kaczmarczyk introduced the petition.

STAFF ACTION:

Myers: This is 2 design standards variance. The first one is the Van Buren Fire Department Minimum Parking Variance from Chapter 806 and that is with the number of 2004-VAR-23. The second one is the Van Buren Fire Department Streetscape Variance from Chapter 830 under 2004-VAR-24. Here is a summary of the petitions. The petitioner is proposing 5 parking spaces with 1 ADA space, which will largely offer parking to the public. The parking lot near the existing fire station will offer additional parking. The new fire station will house all fire department vehicles in doors. The proposed landscaping does not meet streetscape requirements per the submitted site plan for this property. The property is fairly unique in that almost all parcel boundaries include street frontage. The trustees are applying for this variance because they are concerned about sight distance when planting a dense landscape buffer along the streetscapes and as well the petitioner will have to meet all other landscape requirements outside of the streetscapes and including perimeter parking, bio retention and bufferyard landscaping. The trustees will be preserving and planting trees as part of the commercial site plant that is currently under review by the Planning Department. But they are requesting that variance from the Streetscape for most of the perimeter, like I stated. Here is the background for the petition. After meeting with the Engineer for the project, which is Bynum Fanyo and Associates, some recommendations were made and there are 4 recommendations here. The first was to rezone to Institutional/Public, because there was different zoning that didn't allow for the use of a governmental facility on this site and that was approved. I have the date wrong here but that was approved today at the County Commissioners Meeting. It has been rezoned to Institutional/Public. The next was a Grading Permit to prep the site to meet the 2021 deadline. That has been completed. The Commercial Site plan is currently under review and the variances for the landscaping and parking minimums is this petition here. Ok, this petition site is located at 9039 West Hinds Road, 9079 West Hinds Road and 6223 South Burch Road. It is in Section 32 of Van Buren Township. The current zoning, this has all now been rezoned to Institutional/Public. The Comprehensive Plan has it designated as Rural Residential. Now we have some site conditions here. The petition site is 1.78 acres. It contains 4 separate parcels that was all combined into 1 lot of record. That was done prior to the rezone. It maintains frontage along South Burch Road, West Hinds Road and West Center Street. The property was recently approved for 2 alleyway vacations that ran east/west and north/south and the fire station will be locating in the middle of the parcels with driveway access following prior alleyway west

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to east off of South Burch and West Center Street. You can see the slope map too. It is primarily flat to the south and the southwest. Now we have some site photos here of the property. We can kind of go through these to kind of see the petition site at South Burch and West Hinds. Some more petition site photos. We can also see nearby nearby structures that are off property in the top right photograph. Some more photos of the petition site and here we have aerial imagery of the site in general. This existing white home is no longer there. This is some old imagery and the old fire station you can see here in the top right of the photograph, it is the grey building, right were the curser is, that is the existing one. Here we have the petitioner’s letter talking about their own findings and reasons they are applying for the variances. Again for the parking requirements Monroe County Zoning Ordinance requires 27 spaces for the use of governmental facility and its own calculation on how spaces are required per the square footage of the structure. But given that it’s a fire station and the limited spacing in the area the petitioner’s representative is stating that the 5 parking spaces will meet the need for employees and public and the actual fire trucks will be parked inside the structure. In regards to the streetscaping variance, again their main concern would be sight distance for fire trucks and emergency service vehicles with respect to the bufferyard requirement, the streetscape to be exact. Here is a site plan. This is just an overview site plan of the petition site and the fire station structure as well as the drive kind of design they have here. The Highway Department didn’t have any comments on this petition particularly. Stormwater didn’t have any comments on this petition. They are both directly involved review of the commercial site plan, which I said is under planning review at this time. Overall, staff has 2 recommendations. Staff recommends approval of the Minimum Parking Requirement to Chapter 806, based on the findings of fact and subject to the Monroe County Highway Department and Stormwater Engineer reports. Staff also recommends approval of the Streetscape Requirement to Chapter 830, based on the findings of fact and subject to the Monroe County Highway Department and Stormwater Engineer reports. I will now take any questions, if anyone has any.

RECOMMENDED MOTION:

2004-VAR-23: Staff recommends **approval** of the minimum parking requirement to Chapter 806 based on the findings of fact and subject to the Monroe County Highway Department and Stormwater Engineer reports.

2004-VAR-24: Staff recommends **approval** of the streetscape requirement to Chapter 830 based on the findings of fact and subject to the Monroe County Highway Department and Stormwater Engineer reports.

FINDINGS OF FACT: 2004-VAR-23; Minimum Parking Chapter 806

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

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

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

Findings:

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- The petition site is 1.78 +/- acres;
- The petition site includes the preexisting fire station;
- Approval of the variance would allow the petitioner to construct a parking lot with fewer spaces than the required 27 spaces per Chapter 806-5;
- The petitioner proposes 5 parking spaces, including one ADA space;
- The petition site is currently zoned Suburban Residential (SR) and Limited Business (LB) and is in the process of completing a rezone to Institutional/Public (IP);
- The site is less than 15% slope (see Slope Map);
- The petition site is not located in FEMA Floodplain;
- There are no known karst areas;
- There is no evidence the site is located on environmentally sensitive land;
- **Conclusion:** It would not interfere with a natural or scenic area.

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

Findings:

- See findings under A(1);
- The petition site maintains frontage along S Burch Rd, W Center ST, and W Hinds Rd, which are all classified as Local Roads;
- A driveway permit has been applied for following the procedure for site plan approval;
- The proposed use on the petition site must meet all other Commercial Site Plan requirements before final permits can be issued;
- **Conclusion:** It would not interfere with or make more dangerous, difficult, or costly, the use, installation, or maintenance of existing or planned transportation and utility facilities.

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

Findings:

- See findings under A(1) and A(2);
- The required parking spaces for Governmental Facility is listed as 3 spaces per 1000 Gross Floor Area (GFA);
- The use of the property will be a Governmental Facility, specifically the Van Buren Fire Department;
- The proposed building is approximately 8800 sq ft, which would require 27 parking spaces. Some of the interior sq ft proposed would offer garage space for the department's vehicles;
- The surrounding parcels on all sides are zoned Suburban Residential (SR) and Agriculture/Rural (AG/RR);
- The proposed use of the petition site would be consistent with nearby activities;

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

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

Findings:

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

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

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

Findings:

- See findings under A(1), A(2), and A(3);
- The petitioner is applying for a minimum parking variance which is the minimum design standard sought to be varied;
- **Conclusion:** The specific purposes of the design standard sought to be varied would be satisfied.

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

Findings:

- See findings under A(1), A(2), and A(3);
- The proposed use on the petition site must meet all other Commercial Site Plan requirements before final permits can be issued;
- **Conclusion:** It would not promote conditions (on-site or off-site) detrimental to the use and enjoyment of other properties in the area (e.g., the ponding of water, the interference with a sewage disposal system, easement, storm water facility, or natural watercourse, etc.).

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

Findings:

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

(C) The approval, including any conditions or commitments deemed appropriate, is the minimum variance necessary to eliminate practical difficulties in the use of the

property, which would otherwise result from a strict application of the terms of the Zoning Ordinance.

Findings:

- See findings under A(1), A(2), and A(3);
- The Township Trustees state they cannot reuse the existing fire township building and will tear it down. Staff would prefer to see reuse prior to building new, but the Trustees have documented issues of water pressure at the existing fire station building.
- The 27 spaces required per Chapter 806 for the proposed use will not practically fit given the size of the petition site;
- The 5 proposed parking spaces will meet only the needed employees during any given working shift;

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

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

FINDINGS OF FACT: 2004-VAR-24; Streetscape Landscaping Chapter 830

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

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

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

Findings:

- The petition site is 1.78 +/- acres;
- The petition site includes the preexisting fire station;
- The Trustees will be preserving and planting trees as part of the Commercial site plan, but are requesting a variance from planting a streetscape along most of the perimeter of the property;
- The petition site is currently zoned Suburban Residential (SR) and Limited Business (LB) and is in the process of completing a rezone to Institutional/Public (IP);
- The site is less than 15% slope (see Slope Map);
- The petition site is not located in FEMA Floodplain;
- There are no known karst areas;
- There is no evidence the site is located on environmentally sensitive land;

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- **Conclusion:** It would not interfere with a natural or scenic area.

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

Findings:

- See findings under A(1);
- The petition site maintains frontage along S Burch Rd, W Center ST, and W Hinds Rd, which are all classified as Local Roads;
- A driveway permit has been applied for following the procedure for site plan approval;
- The proposed use on the petition site must meet all other Commercial Site Plan requirements before final permits can be issued;
- **Conclusion:** It would not interfere with or make more dangerous, difficult, or costly, the use, installation, or maintenance of existing or planned transportation and utility facilities.

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

Findings:

- See findings under A(1) and A(2);
- The required landscaping for streetscapes is outlined in Chapter 830-9 and typically requires the planting of 1 tree, 10 shrubs, and 10 shrubs/perennials/grasses/ferns for every 35 lineal feet of street frontage, excluding driveway openings;
- The use of the property will be a Governmental Facility, specifically the Van Buren Fire Department;
- The surrounding parcels on all sides are zoned Suburban Residential (SR) and Agriculture/Rural (AG/RR);
- The proposed use of the petition site would be consistent with nearby activities;
- **Conclusion:** The character of the property included in the variance would not be altered in a manner that substantially departs from the characteristics sought to be achieved and maintained with the relevant zoning district.

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

Findings:

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

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

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

Findings:

- See findings under A(1), A(2), and A(3);
- The petitioner is applying for a streetscape landscaping variance which is the minimum design standard sought to be varied;
- **Conclusion:** The specific purposes of the design standard sought to be varied would be satisfied.

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

Findings:

- See findings under A(1), A(2), and A(3);
- There is one residence that adjoins the property, which will be required to be buffered by landscaping;
- The proposed use on the petition site must meet all other Commercial Site Plan requirements before final permits can be issued;
- The Township Trustees state they cannot reuse the existing fire township building and will tear it down. Staff would prefer to see reuse prior to building new, but the Trustees have documented issues of water pressure at the existing fire station building.
- **Conclusion:** It would not promote conditions (on-site or off-site) detrimental to the use and enjoyment of other properties in the area (e.g., the ponding of water, the interference with a sewage disposal system, easement, storm water facility, or natural watercourse, etc.).

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

Findings:

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

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

Findings:

- See findings under A(1), A(2), and A(3);
- Requiring streetscape landscaping could potentially lead to line-of-sight issues with respect to the proposed use of the Van Buren Fire Station on the petition site;

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

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

QUESTIONS FOR STAFF – 2004-VAR-23 & 2004-VAR-24 – Van Buren FD

Kaczmarczyk: Any questions for staff? Seeing none. Would the petitioner’s representative like to speak?

**PETITIONER/PETITIONER’S REPRESENTATIVE –
2004-VAR-23 & 2004-VAR-24 – Van Buren FD**

Butler: Hello everyone, this is Daniel Butler with Bynum Fanyo and Associates. We are representing Van Buren Township Trustees for this new fire department. The reduced amount of street scape plantings, we are just reducing, we are not asking for them to be absent. We are still proposing 4 trees, 50 shrubs, 50 grasses and perennials for street scape along the west property line. The proposed septic is at the northwest side of the site and it has to be on undisturbed ground. So, we can’t have any grading in that area and then we will also have existing utilities at the northwest corner of the site and also of course being a fire station they are requesting for sight distance purposes that it not be on the south and north sides of the properties for wanting to get in and out for a fire with a fire truck. The last thing is the other hardship that this property create is that it is surrounded by 3 public roads so that’s 3 times the streetscape. That is a little more streetscape than normal at any given commercial property. The southeast residential property to this site we are providing a thick buffer and so we are not taking any of that way but still being mindful of our neighbor there to the southeast. As for the parking there will be some additional parking at the southwest corner of the building that is not shown on this plan providing 4 more spaces, so we will have spaces for visitors plus for the fire fighters trucks or their own vehicles. But the amount that is required by the ordinance far exceeds what you need for a fire station of this type. I can answer any questions.

Kaczmarczyk: Does anyone have any questions of the petitioner? Thank you sir. Would anyone else like to speak on behalf of the petition? Seeing none. Would anyone like to speak against the petition? Seeing none. I will entertain a motion.

SUPPORTERS – 2004-VAR-23 & 2004-VAR-24 – Van Buren FD: None

FURTHER SUPPORTERS – 2004-VAR-23 & 2004-VAR-24 – Van Buren FD: None

REMONSTRATORS - 2004-VAR-23 & 2004-VAR-24 – Van Buren FD: None

ADDITIONAL QUESTIONS FOR STAFF –

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2004-VAR-23 & 2004-VAR-24 – Van Buren FD: None

FURTHER QUESTIONS FOR STAFF – 2004-VAR-23 & 2004-VAR-24 – Van Buren FD

Clements: **In the matter of request 2004-VAR-23 and 2004-VAR-24, design standards variances to Chapter 806 regarding Minimum Parking and Chapter 830 regarding Streetscape, I would like to recommend approval, I would like to move that we approve both of these variances based on practical difficulty and finding of fact and subject to Monroe County Highway Department and Stormwater Engineer reports.**

Kaczmarczyk: I will **second** that.

Wilson: I will call the roll. The vote is on variance 2004-VAR-23 and 2004-VAR-24, the Minimum Parking Variance from Chapter 806 and Streetscape Variance from Chapter 830 for Van Buren Fire Department project to be located at 9039 West Hinds Road in Van Buren Township and a vote in favor is a vote to approve both variances. Margaret Clements?

Clements: Yes.

Wilson: Bernie Guerrettaz?

Guerrettaz: Yes.

Wilson: William Hosea?

Hosea: Yes.

Wilson: Mary Beth Kaczmarczyk?

Kaczmarczyk: Yes.

Wilson: Vicky Sorenson?

Sorenson: Yes.

Wilson: Both variances are granted by a vote of 5 to 0.

The motion in cases 2004-VAR-23, Van Buren Fire Dept. Min. Parking Variance from Chapter 806 and 2004-VAR-24, Van Buren Fire Dept. Streetscape Variance from Chapter 830, favor of approving the variances, carried unanimously (5-0).

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Kaczmarczyk: Did we approve the minutes from the last meeting?

Wilson: I don't think we did.

Kaczmarczyk: Shall we go back and do that?

Hosea: Might as well.

Kaczmarczyk: I wasn't in the last meeting, so those that were will have to do that. How do we go about doing that?

Nester Jelen: That would be for March 4th and I think we did send those out. Let me check.

Kaczmarczyk: They are in the packet.

Clements: You did send them. I just can't find it. **I move that we approve the minutes from the March 4th Board of Zoning Appeals meeting.**

Hosea: **Second.**

Wilson: Just because of the nature I am going to do a roll call on this. Bernie Guerrettaz?

Guerrettaz: Yes.

Wilson: William Hosea?

Hosea: Yes.

Wilson: Mary Beth Kaczmarczyk?

Kaczmarczyk: Abstain.

Wilson: Vicky Sorenson?

Sorenson: Yes.

Wilson: Margaret Clements?

Clements: Yes.

Wilson: The minutes are approved.

DRAFT

The motion to approve the minutes from the March 4, 2020 meeting of the Board of Zoning Appeals, carried unanimously (5-0).

REPORTS:

Planning/Wilson: I have no announcements except to thank the BZA for bearing with us in this kind of new event of trying to do this remotely. I think it went remarkably well considering. But I want to thank you for your patience.

Kaczmarczyk: My dog really enjoyed it.

Wilson: We will know more about the June meeting as events unfold. I think it's likely it will be at a minimum a hybrid meeting, but I will have some kind of online participation. We are unsure at this point other than we will have a June meeting.

Kaczmarczyk: I am ready.

Clements: Thank you to the staff for doing such a wonderful job. I really appreciate everything you present to us. Thank you.

Nester Jelen: Thank you.

Kaczmarczyk: It is nice hearing all of your voices again. Stay safe out there.

Wilson: Are we adjourned?

Kaczmarczyk: Oh, yes, I am sorry. A motion to adjourn the meeting.

Guerrettaz: So move.

Kaczmarczyk: All in favor say "aye".

Clements: Aye.

Hosea: Aye.

Sorenson: Aye.

Guerrettaz: Aye.

Kaczmarczyk: Aye. Meeting adjourned.

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Legal/Schilling: No report.

The meeting adjourned at 8:34 P.M.

Sign:

Attest:

Mary Beth Kacmarczyk, Chairman

Larry J. Wilson, Secretary