

DRAFT

**BOARD OF ZONING APPEALS
Virtual Meeting via ZOOM - Minutes
October 7, 2020 - 5:30 p.m.**

CALL TO ORDER

ROLL CALL

INTRODUCTION OF EVIDENCE

APPROVAL OF AGENDA

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

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

ABSENT: *None*

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

OTHERS PRESENT: David Schilling, Legal

INTRODUCTION OF EVIDENCE:

Jackie Nester Jelen 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, carried unanimously

APPROVAL OF MINUTES:

No minutes to approve at this time.

DRAFT

ADMINISTRATIVE BUSINESS: None.

OLD BUSINESS:

- 1. 2008-CDU-04 Doggoasis Conditional Use, Chapter 804**
One (1) 14.33 +/- acre parcel in Richland Township, Section 6 at 9606 W Reeves RD. **Zoned AG/RR.**

NEW BUSINESS:

- 1. 2008-VAR-53 Waldon Minimum Lot Width Variance from Chapter 804**
One (1) 2.94 +/- acre parcel in Richland Township, Section 18 at 9155 W Ratliff RD. **Zoned AG/RR.**
- 2. 2008-VAR-54 Anna Hupp Minimum Lot Area Variance from Chapter 804**
3. 2008-VAR-55 Anna Hupp Minimum Lot Width Variance from Chapter 804
4. 2008-VAR-55a Anna Hupp Side Yard Setback Variance from Chapter 804
One (1) 0.93 +/- acre parcel in Bean Blossom Township, Section 32 at 8484 W Chaffin Chapel RD. **Zoned AG/RR.**
- 5. 2008-VAR-56 Groschwitz Minimum Lot Size Variance from Chapter 804**
6. 2008-VAR-57 Groschwitz Minimum Lot Width Variance from Chapter 804
One (1) 0.83 +/- acre parcel in Washington Township, Section 34 at 1491 E Sample RD. **Zoned AG/RR.**
- 7. 2008-VAR-58 Merritt Front Yard Setback Variance from Chapter 833**
8. 2008-VAR-59 Merritt Maximum Lot Coverage Variance from Chapter 833
One (1) 0.46 +/- acre parcel in Bloomington Township, Section 16 at 4416 N Thistle DR. **Zoned RE1.**
- 9. 2008-VAR-60 Sandoval Side Yard Setback Variance from Chapter 833**
One (1) 0.49 +/- acre parcel in Van Buren Township, Section 12 at 2624 S Hickory Leaf DR. **Zoned RS3.5.**
- 10. 2009-VAR-61 Neal Residential Storage Structure Variance from Chapter 802**
One (1) 2.7 +/- acre parcel in Bean Blossom Township, Section 22 at 8458 N Jenner DR. **Zoned AG/RR.**
- 11. 2009-VAR-62 Bartlett Minimum Lot Area Variance from Chapter 804**
One (1) 2.0 +/- acre parcel in Bloomington Township, Section 31 at 6899 N Maple Grove RD. **Zoned AG/RR.**
- 12. 2009-VAR-63 Hensley Minimum Lot Area Variance from Chapter 804**
13. 2009-VAR-64 Hensley Minimum Lot Width Variance from Chapter 804
One (1) 3.04 +/- acre parcel in Polk Township, Section 32 at 9451 S Chapel Hill RD. **Zoned FR.**

DRAFT

- 14. 2009-VAR-65 Eldon Environmental Constraints Overlay Area 2 (15% Slope) Ch.825**
One (1) 2.76 +/- acre parcel in Salt Creek Township, Section 21 at 7212 E Pine Grove RD. **Zoned CR/ECO2.**
- 15. 2009-VAR-66 Baker DADU Condition No. 55 (Shared Driveway) Variance, Ch. 802**
16. 2009-VAR-67 Baker DADU Condition No. 55 (Residential Space) Variance, Ch. 802
Three (3) 8.93 +/- acre parcel in Bean Blossom Township, Sections 22 & 27 at 8000 N Mt. Tabor RD. **Zoned AG/RR.**
- 17. 2009-CDU-05 Fields Conditional Use for Historic Adaptive Reuse from Chapter 813**
One (1) approximate 0.2 +/- acre parcel in Perry Township, Section 34 at 6189 S Fairfax RD. **Zoned SR/ECO3/HP Overlay.**

REPORTS:

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

DRAFT

Nester Jelen: I just want to make an announcement real quick and I will do this as we kind of get to the half way point. If it is ok by members and it will involve a vote, we would like to propose that the petitioners have a total of 5 minutes to speak and then any supporters or remonstrators have a total of 3 minutes to speak.

Guerrettaz: Do you want a motion now?

Nester Jelen: Sure.

Guerrettaz: **I move that we enact the policy that Jackie just told us about for the time limits on the petitioners and the public on the petitions.**

Kaczmarczyk: I **second** that motion.

Nester Jelen: Alright, I will call the roll. Vicky Sorensen?

Sorensen: Yes.

Nester Jelen: William Hosea?

Hosea: Yes.

Nester Jelen: Margaret Clements?

Clements: Yes.

Nester Jelen: Mary Beth Kaczmarczyk?

Kaczmarczyk: Yes. I was going to suggest the same thing.

Nester Jelen: Bernie Guerrettaz?

Guerrettaz: Yes.

Schilling: Jackie, just a word of explanation. That motion was prompted by the number of agenda items to be dealt with tonight. So, it is an unusual circumstance.

Nester Jelen: Yes, we have 17 agenda items, so that was a recommendation. Go ahead, William.

Hosea: So, it is only for this meeting?

Nester Jelen: It is only for this meeting, yes.

The motion to allow all petitioners to speak a total of 5 minutes and allow all supporters and remonstrators to speak a total of 3 minutes for this meeting only, carried unanimously (5-0).

DRAFT

Nester Jelen: Just another housekeeping item, Tech Services that they could do the timer and if you are not speaking please keep your volume on mute. As a case is presented, Mary Beth is on the screen and she is the Chair, she will ask first for the Planning Staff to present and then ask petitioner to present and then ask for any supporters or remonstrators. At that time you may speak to the Board and those time limits will be implemented. Please limit and all discussion between the petitioner and the remonstrators or the petitioner and the supporters. This is trying to get a full scope of what the request is and the conversation should be between the Board and whoever is speaking.

Kaczmarczyk: Thank you Jackie.

DRAFT

OLD BUSINESS

1. 2008-CDU-04 Doggoasis Conditional Use, Chapter 804

One (1) 14.33 +/- acre parcel in Richland Township, Section 6 at 9606 W Reeves RD. **Zoned AG/RR.**

BOARD ACTION: Kaczmarczyk introduced the petition.

STAFF ACTION:

Myers: Thank you. Can you guys hear me ok?

Kaczmarczyk: Yes.

Myers: Alright, so this is Doggoasis Conditional Use Variance to Chapter 804. We heard this in last month's BZA Meeting. At that meeting, Board members voted to continue petition to this meeting based on the need for more information regarding the access questions to West Reeves Road to the petition site, as well as the need for more time to provide additional notice to nearby neighbors. There was some discussion about neighbors not necessarily getting notice letters and I have been in contact with some of those neighbors. With the Rules of Procedures with Board of Zoning Appeals meetings some of those neighbors fell outside of the criteria that we have to address and send letters to neighbors as notice. Quickly, I am going to go over a refresher of this case. It is a Conditional Use Variance from Chapter 804. The purpose is to operate a dog kennel/boarding/daycare facility located in the Agricultural/Rural Reserve zoning district on 14.33 acres. Chapter 802 states that kennels are conditional permitted in the Agricultural/Rural Reserve zone. This petition is for the full definition of kennel as Chapter 802 defines but the Board of Zoning Appeals members are able to put any kind of conditions or limitations on that definition based upon the cover letter that the petitioner submitted to the Planning Staff in the regard that they won't really be doing quite per say the same types of activities as the definition might entail for this petition. Going over some more background. The petitioner's requested use will not utilize breeding or selling; however the conditional use request is the same, kind of like I said a moment ago. The petitioner could be subject to the limits of the use in either a written commitment referencing the submitted cover letter or by what is approved explicitly on the site plan stage when we come to that. Any new structures or fencing over 6' feet in height would trigger the site plan process. Again, day to day operations according to the petitioner would be hosting of 5 to 10 dogs on the property. Clients are scheduled to arrive between 7 am and 12 pm and also 4 pm and 8pm, those are for drop-offs and pick-ups. Alright, so here we have some photographs of the petition site. It is located at 9606 West Reeves Road. This is the view from the north. Not all of the parcel lines are shown here. You can see this second home toward the middle of the petition site that is actually a separate parcel and is one of the neighbors. I believe they will be on the call tonight. The structures to the upper right corner that is the existing single family residence for the petition site and then that long easement that extends up off the screen that goes to West Reeves Road. The rest of the petition site other than that middle home site is the petition site. It is that 14.33 acres. There is fencing onsite and there are some existing structures as well. Now we have some more photographs here, just zooming in and getting a better idea of the layout of the petition site and some photographs being included in the last meeting shows that single family residence, the back yard of that single family residence, and in that bottom right photograph you can see in the distance the white house that is the neighbor adjacent to them. More photographs of the gate and fenced

DRAFT

area that goes onto the pasturage area that currently hosts goats and there is also a small chicken coop here on the property and just more photographs kind of giving an idea of the layout here. Another photograph of the petition site. In the last meeting Planning Staff had a recommendation of approval and then the day before that meeting the Monroe County Highway Department provided their recommendation and their assessment on the access and driveway for the petition site. Based on that analysis of sight distance and just traffic consideration from the Highway Department, Planning Staff felt obligated to switch their recommendation from approval to denial, based on that finding. I have highlighted that finding here on this slide that is also included in the packet that talks about some of those assessments here and our ultimate conclusion of the proposed use does present an apparent dangerous, injurious or noxious condition based on the Highway Department's assessment. On the next slide I have that original Highway Department assessment. It is also in the packet for you and then the photograph here on the right is a photograph of that long stretch of parcel. It is a parcel itself that is owned by the petition site owner. But it also acts as an easement for that neighbor that is landlocked. You can kind of see those parcel lines in the photograph here from the Highway Department's report. There is that long stretch there. Here is a photograph that I created trying to show you more of the West Reeves Road and the entrance to the petition site. Those distance numbers measured in yellow, those are the numbers that the Monroe County Highway Department provided. I just kind of tried to measure out what those look like and then here are some pictures, a google street view. This is from 2009 so there has been quite some time since these photographs. But you can see here in the background a barn structure and then right before that is this driveway cut on the right and that is the entrance to the petition site. The next photograph is coming from the opposite direction and you can slightly see the driveway cut to the left there. Again, these photographs are quite old so likely some foliage has changed and I am not sure about the road condition as it is represented here. But I thought that this would be useful. Another aerial photograph. This is from 2020 so you can really see how long that parcel easement is that gives access to the petition site. Here we have portions of the cover letter that were submitted by the petitioner. They are also in your packet. It talks about the general layout and idea for the business, the business practices that will be going on, on the property, as well as on the slide some letters of support for the petitioner's as well. These were submitted I believe yesterday so these letters were not able to go into the packet that went out but I do want to spend some time on them. There are 4 letters of support from previous or current clients of the petitioner and they talk about how her business practices are above and beyond other kennels in the area as well as her attention to detail with taking care of the dogs, some of her credentials in veterinarian work as well as just being a really good advocate for these dogs and her kind of new technique in taking care of them when they are a part of her pack, so to speak. Additionally, just like we had at the last meeting there were some letters of remonstrance. These are those letters from the previous meeting. Essentially these letters are questioning the business. They are worried about the noise of dogs. They are worried about dogs getting out. They are also worried about access to the property. This is a remonstrance letter that was submitted after the past September meeting. I believe this one is in the packet because it came in time. So, I hope that you guys read through all of this stuff. This one also talks about how they worried about the access point and other concerns just in general about having a dog kennel use in the area. This letter of remonstrance came in this afternoon, so it was not included in the packet. This is a remonstrance letter from the neighbor that is landlocked around the petition site. She was vocal in the last meeting about her concerns and provided some pictures of the access and easement. Her main concerns in this again are about some of the business practices as well as the potential issues with access and safety. Those are some of the photographs

DRAFT

that the neighbor submitted in the last meeting, just kind of a refresher. We can go back through any of these slides during our discussion of the petition if we see fit. Overall, staff had to change their recommendation to denial of the Conditional Use Variance for Kennel Services, based on the findings of fact, specifically the finding, “the conditional use shall not involve any element or cause any condition that may be dangerous, injurious or noxious to any other property or persons, and shall comply with performance standards delineated in this ordinance.” That was primarily on the issue of access and Monroe County Highway Department’s assessment. Should this Conditional Use Variance receive approval, Planning Staff did have some recommendations if it were to go that way and that is including one or more of the following conditions;

- 1) The petitioner submit a site plan that complies with the requirements of Chapters 815 and all other applicable regulations contained in the Monroe County Zoning Ordinance.
- 2) The Board of Zoning Appeals limit the scope of the dog kennel/boarding/daycare conditional use to the maximum number of dogs the petitioner has stated in the petitioner cover letter.
- 3) The petitioner agrees to improve the access road to a reasonable degree that enhances the safety of ingress/egress to the subject property.

Again, these are just some ideas of what could be if the petition goes that way but otherwise, Planning Staff has to recommend denial based on that safety assessment of the access point. I will now take any questions.

RECOMMENDED MOTION:

Deny the conditional use variance for Kennel Services Chapter 813, based on the findings of fact, specifically finding (E): “the conditional use shall not involve any element or cause any condition that may be dangerous, injurious or noxious to any other property or persons, and shall comply with performance standards delineated in this ordinance”.

Should the conditional use variance receive approval, Planning Staff recommends including one or more of the following conditions:

- 4) The petitioner submit a site plan that complies with the requirements of Chapters 815 and all other applicable regulations contained in the Monroe County Zoning Ordinance.
- 5) The Board of Zoning Appeals limit the scope of the dog kennel/boarding/daycare conditional use to the maximum number of dogs the petitioner has stated in the petitioner cover letter.
- 6) The petitioner agrees to improve the access road to a reasonable degree that enhances the safety of ingress/egress to the subject property.

FINDINGS OF FACT: 1806-CDU-05 Conditional Use, Chapter 813

In order to approve a conditional use, the Board must have findings pursuant to Chapter 813-5 Standards for Approval. The Board must find that:

- (A) **the requested conditional use is one of the conditional uses listed in Chapter 813-8 (for the traditional County planning jurisdiction) or Table 33-3 (for the former Fringe) for the zoning district in which the subject property is located. In addition to the other relevant standards imposed by or pursuant to this chapter, the standards,**

uses and conditions set forth in Section 813-8 are hereby incorporated as standards, uses and conditions of this chapter;

Findings:

- The petition site is zoned Agriculture/Rural Reserve (AG/RR), as defined by the Chapter 802;
- The Use Table in Chapter 802 specifies that “Kennel, including commercial animal breeding operations” are a Conditional Use in the AG/RR zoning district;
- The Use Table refers to Chapter 802 for conditions for a “Kennel”;

(B) all conditions, regulations and development standards required in the Zoning Ordinance shall be satisfied;

Findings:

- The petitioner has requested the kennel/boarding/dog daycare use for the property located at 9606 W Reeves RD;
- There are three specific conditions pertaining to kennels in Chapter 802;
 - 10. Outdoor kennels and storage areas shall not be visible from streets and/or adjacent properties.
 - 15. The Plan Commission may attach additional conditions to its approval in order to prevent injurious or obnoxious dust, fumes, gases, noises, odors, refuse matter, smoke, vibrations, water-carried waste or other objectionable conditions and to protect and preserve the character of the surrounding neighborhood.
 - 53. Only permitted on lots 5 acres or greater in the AG/RR, CR, and FR zoning districts.
- The conditional use permit is required to accommodate the additional use of kennel/boarding/dog daycare;
- The petitioner will be required to comply with the Performance Standards set forth in Chapter 802-4 of the Monroe County Zoning Ordinance as a condition of Site Plan approval.
- The petitioner will be required to submit a site plan meeting all applicable standards for parking, landscaping, bioretention, signage, etc. prior to receipt of a Land Use Certificate;
- **Conclusion: all conditions, regulations, and development standards required in the Zoning Ordinance shall be satisfied.**

(C) granting the conditional use shall not conflict with the general purposes of the Zoning Ordinance or with the goals and objectives of the Comprehensive Plan;

Findings:

- Kennel is a permitted conditional use within the Agriculture/Rural Reserve (AG/RR) zoning district;
- The Monroe County Comprehensive Plan designates the area as Farm and Forest;
- The petition site is 14.33 +/- acres;

DRAFT

- The minimum lot size for AG/RR zoning district is 2.5 acres;
- The proposed use will be required to comply with site plan design standards;
- There is no apparent conflict with the general purposes of the Zoning Ordinance;
- **Conclusion: granting the conditional use shall not conflict with the general purposes of the Zoning Ordinance or with the goals and objectives of the Comprehensive Plan.**

(D) the conditional use property can be served with adequate utilities, access streets, drainage and other necessary facilities;

Findings:

- The petition site maintains access from W Reeves RD (a minor collector) via a 25' flagpole piece of land under the same ownership;
- The petition site does not exhibit any direct frontage to W Reeves RD;
- The petition site uses a septic system and has access to water;
- There are no apparent drainage concerns on site, and stormwater will be evaluated with the site plan review;
- **Access to the petition site is via a 25' wide by 1,075' long flagpole piece of land that also services the property at 9612 W Reeves RD;**
- **The access road is gravel and measures approximately 11' in width;**
- **The petitioner has expressed interest in paving the access road to improve access ability;**
- **Conclusion: the conditional use property can be served with adequate utilities, access streets, drainage and other necessary facilities.**

(E) the conditional use shall not involve any element or cause any condition that may be dangerous, injurious or noxious to any other property or persons, and shall comply with performance standards delineated in this ordinance;

Findings:

- Dogs hosted at the petition site will not be allowed at large and will always be restrained by either the existing house, fences, or leashes;
- Dogs hosted at the petition site will be restrained from interacting with the public;
- Dogs hosted at the petition site will be trained to minimize barking during their stay;
- Dog waste will be cleaned up and disposed of properly to prevent odor and protect/preserve the character of the surrounding neighborhood;
- **Access to the petition site is via a 25' wide by 1,075' long flagpole piece of land that also services the property at 9612 W Reeves RD;**
- **According to Highway Department analysis, site distance to the north is 227';**
- **According to the Highway Department analysis, site distance to the south is 389';**
- **According to Highway Department analysis there have been eight (8) crashes in this area within the last four (4) years;**
- **Site distance measurements include clearing brush to the north and south for sight distance requirements;**
- **Site distance requirements are 390' in both directions;**

DRAFT

- **Conclusion:** The proposed use does present an apparent dangerous, injurious or noxious condition.

(F) the conditional use shall be situated, oriented and landscaped (including buffering) to produce a harmonious relationship of buildings and grounds with adjacent structures, property and uses;

Findings:

- The petition site is primarily forested and provides its own natural buffer to the adjacent property to the west and to the south;
- The property to the north and to the east is owned by the Monroe County Board of Commissioners and is primarily vacant aside from Flatwoods Park to the north managed by Monroe County Parks and Recreation;
- **The petition site is currently used for accessory livestock, non-farm animals such as goats, chickens and roosters;**
- The proposed use of the dog kennel/boarding/daycare on a 14.33-acre property appears to be harmonious with the adjacent properties that are rural or agricultural in nature;
- The petitioner must apply for a site plan review to develop the entirety of the property in compliance with the Zoning Ordinance;
- **Conclusion: the conditional use is situated, oriented and landscaped to produce a harmonious relationship of buildings and grounds with adjacent structures, property and uses.**

(G) the conditional use shall produce a total visual impression and environment which is consistent with the environment of the neighborhood;

Findings:

- See findings under (B) and (F);
- The petition site is located on 14.33 acres;
- The petition site is accessed via a 25' flagpole piece of land under the same ownership and is not visible from W Reeves RD;
- The petition site is located in a rural area that exhibits both residential and agricultural uses;
- The neighboring properties are zoned Agriculture/Rural Reserve (AG/RR);
- **The petition site is currently used for accessory livestock, non-farm animals such as goats, chickens and roosters;**
- **The petition site currently exhibits a pasturage area as well as existing barbed wire fencing;**
- **The petitioner has stated her intent to utilize and improve existing fences and pasture area for her dog daycare services;**
- **Conclusion: the conditional use shall produce a total visual impression and environment which is consistent with the environment of the neighborhood.**

(H) the conditional use shall organize vehicular access and parking to minimize traffic congestion in the neighborhood; and,

DRAFT

Findings:

- The petitioner must comply with the standards set forth in Chapter 806 (Parking);
- Chapter 806 of the Monroe County Zoning Ordinance states projects located outside of urban and designated community areas with off-street parking areas less than 4,000 sq. ft. in size may use crushed stone, porous asphalt, porous concrete, permeable paver systems, or plant mix asphalt or concrete;
- The petition site has driveway access to W Reeves RD, a minor collector road;
- Access to the petition site is via a 25' wide by 1,075' long flagpole piece of land that also services the property at 9612 W Reeves RD;
- The access road is gravel and measures approximately 11' in width;
- The petitioner has expressed interest in paving the access road to improve access ability;
- Conclusion: the conditional use shall organize vehicular access and parking to minimize traffic congestion in the neighborhood.

(I) All permits required by other Federal, State and local agencies have been obtained.

Findings:

- Any newly proposed structures require Building Department and Planning Department approval;
- The petitioner will be required to submit driveway permits from Monroe County Highway Department prior to site plan review;

QUESTIONS FOR STAFF – 2008-CDU-04 - Doggoasis

Nester Jelen: Bernie, go ahead.

Guerrettaz: A couple of questions. Could you go back to the photo that shows the driveway tied into Reeves Road, that shows the length and the subject property? Ok, there you go. In that photo, the driveway is actually on the property to the right of the petition site. Is that correct?

Myers: The highlighted parcel in pink that is the petition site. The driveway extends off of that, the long easement drive extends along the right most property line and continues off screen to service the landlocked parcel that is the neighbor.

Guerrettaz: Ok and the driveway itself is owned by, as we are looking at it, is owned by the property that the driveway is on is owned by the parcel to the right between Reeves Road and drive.

Myers: The long easement driveway that is actually owned by the owner of the petition site. They are in a purchase agreement with the petitioner in that if the petition is approved that the transfer of ownership would occur.

Guerrettaz: Ok. Ok. I think I have got 3 questions. The second question; when you talk about the sight distance that the Highway Department looked at that is for a commercial driveway permit. Is that correct Drew?

DRAFT

Myers: Yes I believe so. I think that is included in their assessment and recommendation document.

Guerrettaz: I will blend 2 questions together. So, the driveway will have to be improved to a commercial standard. Is that correct? For a site plan review?

Myers: I am not sure on that. I would have to double check with the site plan standards because there is different standards of the site plan commercial. There are some commercial uses that are very industrial or very high usage in nature and then there are also these kind of more home based business type of uses that are also considered commercial use where there is some wiggle room for some standards there.

Guerrettaz: Do you know if there is anyway with the driveway that intersects Reeves Road that the sight distance can be met? Sometimes trees can be removed. Sometimes a bank can be removed. I am curious if they submit a site plan will they be able to come up with an engineered design, in your opinion because you are not looking at a site plan and I understand and respect that but usually when Ben or somebody goes out and measures that off they will say will clearing it looks like it can be obtained. I didn't see anything in there. Is there any way that that sight distance you believe will be able to be met with a plan?

Myers: Sure. In the Highway Department's assessment the requirement for sight distance is 390 feet in both directions. The sight distance to the south is 389 feet. The sight distance to the north is 227 feet. Those measurements according to the Highway Department do include clearing brush to the north and south for those sight distance requirements. The south is just barely missing that distance requirement by one foot according to the assessment and then the northern access sight line is a little bit more constrained. I can't speak to a removal of a bank or anything like that because I know the Highway Department just basically said clearing of brush.

Guerrettaz: The 226 feet is what they feel, maybe I heard something that I didn't hear but the 226.5 feet that they have got marked that is after clearing brush.

Myers: That is after clearing brush according to the Highway Department.

Guerrettaz: Ok. That is all that I have got, thank you.

Kaczmarczyk: Anyone else have any questions for Drew?

Sorensen: I do. Going back to the long driveway Drew, did you say that both parties own the driveway now and it would be given to one of them? I didn't understand that.

Myers: Jackie, if you could go to Elevate. I know that you had that pulled up a second ago, if it's not too much trouble. There we go. The highlighted parcels here, you can see the long easement driveway along with the petition site. Those 2 properties are currently owned by Mary Jones, as indicated below in the table. That is going to be the transfer of ownership to the petitioner. The small landlocked parcel in the middle that is owned by Ms. Rebecca Reid. She doesn't own the driveway but she does have an easement agreement for accessing that driveway and I included that easement documentation in the petition packet.

DRAFT

Sorensen: Is this going to cause a problem between the neighbors on the use of the drive?

Myers: There has been some concern raised for the use of the drive. I believe that we have some measurements in the petition report. Let me see if I can get to it, one second. It is in one of the findings. I know that I have it here, one second. Ok, here we go. The access to the petition site is via a 25 foot wide by approximately 1,705 feet long flag pole piece of land that is the driveway parcel that also services the neighboring property at 9612 West Reeves Road. But it appears currently that that driveway, the gravel drive doesn't extend that full 25 feet and that is why in one of the recommendations if approved that there could be some sort of agreement or conversation about improving that driveway to allow more efficient traffic flow for this type of use.

Sorensen: Can I ask another question? Going to transferring of the property of the driveway and I assume it was Ms. Jones you said would get the property?

Myers: Yes. Mary Jones is the current owner of the petition site and of that flag pole piece of land that is the driveway. She would transfer ownership to the petitioner, who is Karen Swedo.

Sorensen: Is she willing to do that? Do you know?

Myers: Which part? The improvements or?

Sorensen: Transfer ownership.

Myers: Yes, they are in a purchase agreement contingent upon this petition.

Kaczmarczyk: Does anyone else have any questions for Drew?

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

Kaczmarczyk: Ok. Thank you Drew. Is the petitioner here and would they wish to speak?

PETITIONER/PETITIONER'S REPRESENTATIVE – 2008-CDU-04 – Doggoasis

Swedo: This is the petitioner, Karen Swedo.

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

Swedo: Yes.

Kaczmarczyk: You can proceed.

Swedo: I have a question before we begin the time, if I may.

Kaczmarczyk: Ok.

Swedo: At the last meeting there were 30 to 45 minutes of remonstrance that I was blindsided by

DRAFT

and so my entire petition was postponed without everything being covered. I have spent the last month putting together this presentation so it is very straightforward and to the point. There is just a lot of information necessary to sufficiently mitigate the concerns brought forth. I am hoping that I may be granted some additional time to compensate for these unusual circumstances, at the very least to full cover the concerns of the insufficient access, since that is only finding not in support. Since the Planning Department has not brought forth concerns of public nuisance or the quality of care, I guess I can leave those out in the interest of time.

Guerrettaz: How much time does a petitioner typically, there is a restriction already in the ordinance, isn't there Dave?

Nester Jelen: You are on mute, Dave.

Kaczmarczyk: Dave, you are still muted.

Schilling: Ok, yeah I don't believe so. I can't remember if there is anything in the rules but I can check that real quickly.

Wilson: Dave, I looked at the rules today and there is not anything in the BZA rules related to limiting speakers. I believe there may be in the Plan Commission rules, however.

Schilling: Ok.

Guerrettaz: That is probably what I was thinking of too. How much time do you think you need Ms. Swedo?

Swedo: If I could have 15 minutes or so I can get most of this covered. I will talk really fast. It is all very straight forward and to the point.

Guerrettaz: I would suggest that we go 10 minutes because it is a unique situation but Ms. Swedo is back and she was continued for lack of information and she has got information to share. So, I would suggest that we allow 10 minutes on this first petition because it is a returning case.

Kaczmarczyk: Ok.

Swedo: Additional, the reason...

Clements: I am sorry I would just like to assert that 10 minutes is very generous so let's not go over. Thank you.

Kaczmarczyk: Ok, go.

Swedo: Hello, everyone my name is Karen. I have a presentation actually, a PowerPoint. Can I share my screen?

Nester Jelen: I am sorry Karen. Unless you are the co-host I am not sure you about to share your

DRAFT

screen at the meeting. Is it vital that you have a shared screen?

Swedo: It really helps to defend my points and I was told by the Planning Department that is something that I would be able to do so I put together something.

Dayton: I will give you temporary permissions to share your screen.

Nester Jelen: Thank you, Michele.

Swedo: Thank you. Ok, so I am the founder, owner, operator, pack leader, and petitioner for Doggoasis. The purpose of this presentation is to clarify my intentions, demonstrate the workability of my proposed use on the subject property and prove my expertise, dedication and flexibility in making Doggoasis dream come true. I will do so through personal antidotes, candid photographs, community testimonials, and reputable published information. A good place to start is explaining that I am not trying to operate a run of the mill commercial dog kennel, instead my overarching goal is to change the world for the better on behalf of the animals. Officializing this particular business is just one step in the grand scheme of achieving this monumental vision. I have been taking these steps since I was a child. I have mastered my current positioning and currently the only thing I lack to continue the evolution is an appropriate facility and that is why I am here trying to do everything right by my community and right by the books. I get it, no one wants to live next to a “kennel” and I understand that no everything about this property is perfectly ideal for my intended use. But realistically settling on certain features of a property is an inevitable component of real estate, so any other viable option will also have aspects that are less than ideal. Whether it be the driveway incline, land size, the list goes on. I have been researching the market past and present in Monroe County and nationally since January of this year and this property was the first available in the community worth pursuing. While it may not be perfectly ideal in terms of zoning, for the pack it is everything we need, have dreamed of and what the dogs deserve. We promise to be kind and considerate to our community and the land and to take care with all of our actions, every day to ensure a harmonious relationship as we have since the beginning. To conclude this introduction the only thing I ask of the Board is please for the sake of the pack our petition not be denied on the account of public opinions rationally drawn from incorrect assumptions about the character of my pack and me. On the other hand, I understand the importance of zoning for building a great community, so it is to be denied because of zoning (inaudible). I thank you for your time and look forward to working with you in the future. Without further ado, the first concern is in regards to access. The issues that were brought forth were concerns of insufficient visibility from the access point, Reeves Road being a dangerous road and the access driveway being problematic. According to the Planning Department, the Highway Department’s comments are essentially a recommendation to the Board of Zoning Appeals and also the majority of findings are in support, Planning Staff is obligated to recommend denial of a petition when at least one finding proves unsupportive. Since the only departmental findings not in support are related to the access I figured it was worth pursuing. When formulating my rebuttals and potential solutions, I kept in mind the objectives of the county to ensure the proposed use does not present an apparent dangerous, injurious, or noxious condition and shall organize vehicular access and parking to minimize congestion in the neighborhood. The most crucial barrier is insufficient visibility, partially to north. Generally speaking, there are many roads in the county, let alone the world with insufficient visibility but the purpose of pertinence I have complied evidence from 3 local commercial animal

establishments with similar visibility issues. In the interest of time, I will present one and I can send the others to the Planning Department. (Inaudible) kennel boarding and training in the Agricultural/Rural Reserve zoning district is a 6 minute drive southeast from the petition property. It has plenty of kennels so comparable client traffic and the driveway is similar in length to that of the petition property and visibility to the south is poor due to a dip in the road over a hill. Insufficient visibility is a common issue, however, there are a variety of options for mitigation. Clearing brush would increase visibility all around and recommended by Highway Department. Installing traffic mirrors would increase visibility in both directions for drivers on the road and for the ingress and egress of the driveways on the road. Installing road and traffic warning signs have I quote, “proven safety benefits and are effective at reducing crash rates and severity”, according to the Crash Modification Factors Clearing House, which is an organization funded by the US Department of Transportation Federal Highway Administration with the purpose of compiling all documented cmf’s in a central location. If the county finds it necessary to enhance the safety of ingress/egress of the subject property, installing a no left turn sign for clients egressing the petition driveway will prohibit them from pulling out in front of anyone coming from the area of low visibility. According to google maps, it is a 5 to 6 minute drive in either direction to get back to West State Road 46. Moreover, the no left turn could be designated for a certain time frame specifically to mitigate rush hour concerns and according to Highway Department, counts can be conducted to determine the appropriate time frames. The next point of contention in regards to the access is that Reeves Road is a dangerous road. It was cited by the Highway Department that there have been 8 crashes in the last 4 years but what wasn’t mentioned was that the statistic is for the entirety of Reeves Road. Only one incident was in the vicinity of the petition driveway, but according to the Sheriff’s Department it was unrelated because it was an OWI. Additionally, it is not classified as a crash since no other vehicles or persons were involved in the incident and I have a copy of the accident report that I can send to the Planning Committee. It was stated that Reeves has a crazy and intense rush hour with enough traffic due to it being in between towns. However, no data was provided to attest to the craziness and according to the Highway Department, the last traffic count was done in 2006 but a lot has changed since then making it outdated. Regardless, because convenience is a major factor of client acquisition in general and specifically for my business, it can reasonably assumed that many of my new clients will be those who already use that road for commute and therefore they would not add to the traffic and they would already be familiar with the roads conditions. Additionally, not every dog is dropped off and picked up every day so the traffic would only be fraction of the total number of dogs. There is a school bus that drops students and turns around to the west and across the street slightly north of the petition driveway access point. It would take merely seconds or minutes for the bus to drive to another location to turn around. It can easily be concluded that either this is the safest place, it is safe enough, or it is not that unsafe to begin with. This speaks to the safety of access point of the petition site because of the proximity. Furthermore, if the county finds it necessary so my business does not pose a risk to the students and the public, I am willing to prohibit client drop-off and pick-up for a time frame of approximately 10 minutes when the bus is scheduled to be in the area. According to the Richland Bean Blossom Transportation Services, students must be ready I quote; “5 to 10 minutes before the expected pick-up time in case the service is early or late.” Reeves Road was fully asphalted within the months from Starnes to Country Line Road. According to the National Asphalt Paving Association, an organization that works to improve all aspects of asphaltting, I quote; “well maintained asphalt has been proven to reduce traffic accidents and related fatalities.” Additionally, the Bloomington/Monroe County Metropolitan Planning

DRAFT

Organization included plans to further enhance the rest of Reeves Road from State Road 46 to Starnes Road in their 2035 long range transportation plan adopted in 2015. We are willing to pave a portion of the bottom of the driveway if the county finds it to be a necessary measure to enhance the safety of the ingress/egress of the subject property. However, this seems futile since the bottom portion of the driveway is completely level with the main road and gravel provides more traction than asphalt especially in inclement weather. Along, with all of this clients will be given detailed instructions for drop-offs and pick-ups to ensure the proposed use does not present an apparent dangerous, injurious, or noxious condition and that vehicular access and parking are organized to minimize traffic congestion in the neighborhood. There will be a 2 strike system. One strike to accommodate mistakes and misunderstandings. After of which they will be required to be retrained on the rules. After a second strike, the individual who committed the repeat offense will no longer be permitted to drive on the premises. So as to not punish the innocent dog, they employ a friend, family member or someone hired to conduct drop-off and pick-up. Every individual must go through drop-off and pick-up training. If Reeves Road is as dangerous as reported, it begs the question why more immediate action hasn't been taken mitigate the risks and regardless if my business is permitted steps should be taken on behalf of the safety of the community. The solutions that I presented will not only make it safer for my business but for everyone on the road. Last point of contention in regard to insufficient access is that inclement weather can cause the driveway to become problematic. First, I would like to point out that the drive-ability is not a problem outside of inclement weather and there will be a plan for safely and efficiently dealing with said weather, which I will detail here shortly. The current homeowners can attest that Fedex, UPS, USPS and Amazon all use the driveway to deliver right to the house of the petition property, right on the doorstep. Personally, acquaintances, clients and I have driven a variety of vehicles up and down without an issue. The current homeowners attest that they have not had the issues with the easement. They have never been snowed in. Not just the first person makes it out after a snow. It is not a bobsled run for them. Ice is not a problem and they only had one instance where they needed a tow but that mitigated by the fact that it was their first year of residence. It was due to human error and they have not had an issue since. Theoretically, it would be better for a business to be charge of the driveway than an individual because a business will prioritize maintenance more than an individual who does not have comparable immediate motivation. Furthermore, the national trend since 1970 has been warmer and therefore less inclement weather according to the National Oceanic and Atmospheric Administration and the National Centers for Environmental Information. They recommend not plowing. I have detailed plans for handling inclement weather and that basically covers the access at least.

Nester Jelen: Thank you, Karen. Does the Board have questions for Karen?

Kaczmarczyk: Anybody have a question for Karen on the Board? Thank you very much Karen. That was well thought out and well put together.

Swedo: Thank you. There is a lot more where that came from. I am sorry that we don't get to go over it all. But thank you for your time and consideration.

Kaczmarczyk: Thank you. Is there anyone else here who would like to speak on behalf of the petition? Anyone here who wants to speak on behalf of the petition?

DRAFT

SUPPORTERS – 2008-CDU-04 – Doggoasis

Nester Jelen: If anyone wants to speak in support I believe that they will have to either raise their hand in the participants or Tech Services can they unmute themselves?

Dayton: Yes.

Nester Jelen: Ok, you can unmute if you wish to speak in support.

Kaczmarczyk: Are we seeing any?

Nester Jelen: No.

Kaczmarczyk: Ok. Is there anyone here who wishes to speak against the petition? No one?

Nester Jelen: I am not seeing anyone. Drew, you are on mute.

Myers: I see one, Rebecca Reid.

Nester Jelen: Ok, hand raised. Rebecca.

Kaczmarczyk: Rebecca, can I swear you in please? Rebecca, we can't hear you. Rebecca, did you wish to speak against the petition?

Nester Jelen: Tech Services, do you know if Rebecca is connected to audio?

Dayton: I am looking for the name right now.

Nester Jelen: Ok, it is under Rebecca Reid.

Dayton: They do not currently have audio enabled.

Nester Jelen: Rebecca, we will come back to you if you can audio enabled at some point or you can call in as well.

Dayton: I will put the number to call in to in the chat.

Nester Jelen: Thank you.

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

Swedo: Could I speak for the petitioner?

Kaczmarczyk: Well, we actually already asked for that.

Swedo: I am sorry, I thought we had a little time. I am the petitioner's father and I just wanted..

DRAFT

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

Swedo: Ok.

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

Swedo: I do.

Kaczmarczyk: Ok, go ahead, sir.

Swedo: I just wanted to emphasize Karen's point about the no left turn. I am not sure if that is clear. The lack of visibility is to the right as you leave the driveway but if you prohibit any left turns going out of the driveway that would seem to eliminate any danger from the lack of visibility to the right of the driveway. I just wanted to make that clear so everybody understands what we are talking about there.

Kaczmarczyk: Ok, thank you sir.

Swedo: Thank you.

Kaczmarczyk: Any questions? Do we have?

Nester Jelen: Tech Services put the number into the chat so if Rebecca Reid wants to call the number is 312-626-6799 and you will be asked to put in a meeting id which is 84719354976 and if needed, passcode of 527011. That is for anyone on CATS as well.

Clements: I have one question. Jackie is Highway present? Is a member of the Highway Department present?

Nester Jelen: That is a good question Margaret. I do not believe anyone from the Highway Department is present tonight.

Clements: Ok, thank you.

Nester Jelen: You are welcome. I think one other person was trying to speak.

Welsh: My name is Christina Welsh, is it ok if I speak?

Nester Jelen: Are you in support or a remonstrance?

Welsh: In support.

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

Welsh: I do. I am a family friend of the Swedo's and I have experience being around Karen when she has multiple dogs, upward of 12 and 13 dogs. I know for a lot of people there is a concern

DRAFT

about the noise level and the behavior of the dogs. Had I not been a witness to how she handles the dogs myself and I think if you read some of the reviews from clients you will see the same thing. It would have been in head the barking and the noise that you would get at a typical kennel or shelter where the dogs are caged and board and anxious and just barking the whole time. I just want to attest to the fact that yes, there is barking they are animals but it is not a constant, ongoing barking. Her methods are amazing. You can see in one of the pictures that she shared there is a whole line of dogs walking in a row. She has an incredible ability with pack. They learn very quickly. You see her with dogs like that all the time, walking a row or walking beside each other. I just want to assure anyone that is concerned about noise level or behavior of the dogs, dogs running off that I think some of those images some of us would have in our head aren't really an issue with Karen's methods and here experience with animals. That is all.

Kaczmarczyk: Thank you. Do we have anyone else?

FURTHER SUPPORTERS – 2008-CDU-04 – Doggoasis: None

REMONSTRATORS - 2008-CDU-04 – Doggoasis

Reid: Hello?

Nester Jelen: Is this Rebecca?

Reid: Yes. I am sorry for the problems.

Kaczmarczyk: Ok, please state your name.

Reid: Rebecca Reid.

Kaczmarczyk: And you will be speaking against the petition, is that correct?

Reid: Against, yes.

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

Reid: Yes, I do.

Kaczmarczyk: Alright, you may start.

Reid: I have a few questions, I guess. There has not been any mention of the water situation. We have a well. They have a well on their property that we have water rights to. It is in the deed recorded and I might add that the easement to the driveway has been transferred in the deeds since 1970 to our property also. I wanted to know what the plan was, if they had a plan as far as going on rural water.

Kaczmarczyk: Jackie? If you want to pause that for a second. We would like for you to testify as to what you have against the petition and I think the well water is exactly anything that is brought

DRAFT

into our, am I wrong? Jackie?

Nester Jelen: Sorry, hold on.

Kaczmarczyk I am kind of confused. This is not really the time for petitioner to be asking questions of anyone?

Nester Jelen: Right. Rebecca, this will be a time period where you are describing your remonstrance to this use and this case. Any questions you have specific for the petitioner that will be something that you and that petitioner could work out and the water rights would be something outside of planning and zoning authority.

Kaczmarczyk: Thank you Jackie. Proceed.

Reid: Ok, thank you. Yes, I sure will. The road that we talked about, Reeves Road, as far as that Karen did a good presentation but there is an incredible fluctuations in the elevations and it is kind of an s curve. If you see on any of the google maps you can see overhead that it is an s curve that has been problematic in the past in speeds. I don't know I wrote it in my letter but it marked now because it has been blacktopped from Ellettsville in from about Gilmore. It is marked at 40 not 35 and I believe that changes the sight distances some. From the other direction it is fairly wicked. The speed limit is lower but it is quite odd right there. I am trying to think of anything else. There are several sinkholes in the general area of the adjoining properties. I can't speak for Karst Farms. Mike Baugh and Martha Baugh's property. I'm sorry, the Chile's property. I know of the Abbott's have seen them and also on our property and 9606 also. Dry streams on the driveway that go into ravines and also sinkholes down on the Abbott's property, so it is a fairly karst general area. The slopes and the stone and the sinkholes that develop. That is another concern that I have. As far as the deer that come across the dry stream, it is affecting more than just that ingress and egress that way. I guess if we can't discuss the water that kind of eliminates that one. I guess I will get my letter speak for itself and that is all that I will say, I guess. I am done. Thank you.

Kaczmarczyk: Ok, thank you Ms. Reid. Does anyone have any questions for Ms. Reid?

Swedo: This is the petitioner, Karen Swedo.

Kaczmarczyk: No, I am sorry Karen. It would be do any Board Members have any questions for Ms. Reid?

Swedo: My apologies.

Kaczmarczyk: No worries. No Board Members have any questions?

Nester Jelen: I am not seeing any Mary Beth.

Kaczmarczyk: Ok, thank you. Is there anyone else here who wishes to speak against the petition? Anybody? Ok, we are ready to take a motion on this petition.

DRAFT

ADDITIONAL QUESTIONS FOR STAFF – 2008-CDU-04 – Doggoasis: None

FURTHER QUESTIONS FOR STAFF - 2008-CDU-04 – Doggoasis

Swedo: Can I say one more thing?

Kaczmarczyk: Ma'am, I think that runs past, your time was up. Thank you, Ms. Reid.

Reid: Thank you.

Kaczmarczyk: Would any of the Board Members like to make a motion, please?

Clements: In the matter of, I am sorry I having trouble finding the case number.

Kaczmarczyk: **2008-CDU-04.**

Clements: **I would make a recommendation that we deny the Conditional Use Variance for Kennel Service, Chapter 813, based on the findings of fact, specifically Finding E; “the conditional use shall not involve any element or cause any condition that may be dangerous, injurious or noxious to any other property or persons and shall comply with performance standards delineated in the ordinance.”**

Sorensen: **Second.**

Kaczmarczyk: Ok, call the roll.

Nester Jelen: You are mute, Larry.

Wilson: That was a motion to approve with the conditions, is that correct?

Nester Jelen: It was a motion to deny.

Wilson: I am sorry. The motion is to deny based upon the findings from the Planning Department. Again, a vote in favor is a vote to deny the conditional use. Margaret Clements?

Clements: Yes.

Wilson: Bernie Guerrettaz?

Guerrettaz: Real quick I would just like to say that I think Ms. Swedo is probably an ideal person to have this type of business but it is just not in the proper location and I am truly hung up on Highway Department's recommendation based on the sight distance and the condition of the driveway. If there was a way to get that worked out affirmatively and a site plan could prove that it could work then I might be swayed. Yes.

Wilson: William Hosea?

DRAFT

Hosea: Yes.

Wilson: Mary Beth Kaczmarczyk?

Kaczmarczyk: No.

Wilson: Vicky Sorensen?

Sorensen: Yes.

Wilson: The petition for a conditional use is denied by a 4 to 1 vote.

The motion in case 2008-CDU-04, Doggoasis Conditional Use, Chapter 804, to deny the variance, carried (4-1).

DRAFT

NEW BUSINESS

1. 2008-VAR-53

Waldon Minimum Lot Width Variance from Chapter 804

One (1) 2.94 +/- acre parcel in Richland Township, Section 18 at 9155 W Ratliff RD. **Zoned AG/RR.**

BOARD ACTION: Kaczmarczyk introduced the petition.

STAFF ACTION:

Behrman: Let's make this one a quick one. It is a 2.94 acre lot in Richland Township, Section 18. It is located at 9155 West Ratliff Road. It is zoned Agricultural/Rural Reserve, which requires 200 foot lot width and the deed states that this is 172 foot wide parcel, which is just shy of even being able to administer a waiver which comes in at 180. We are 8 feet shy and that is why we are here. The slope map there in the bottom right shows that there is floodplain on the property. We did go to the Indiana Floodplain Information Portal and confirmed that where the petitioner would like to have a garage is outside of the floodplain area, so they are good on that front. There is an old barn that is in the floodplain but it is grandfathered as is and I think the purpose of this new garage is to get some of those things out of the barn and into the new. These are just 2 of the site photos. The bottom shows a truck that is roughly where the new garage will be going. It is 18 feet off of the property line, so it does meet all other buildable area standards and design standards. Here is the petitioner's letter and the petitioner's site plan. I highlighted in blue where their new pole barn will be going. It is 30 feet by 40 feet. It is located 11 feet from the house and will not be on top of the septic system. What we are running into is just that 8 foot slightly off on the width of the lot. Recommendation for petition 2008-VAR-53 is to approve the design standards variance to Chapter 804 for Minimum Lot Width based on the findings of fact.

RECOMMENDED MOTION

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

FINDINGS OF FACT: Minimum Lot Width

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

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

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

Findings:

- Approval of the variance would allow the petitioner to develop this pre-existing nonconforming lot of record;
- The site contains an existing single-family residence with attached garage, an approximately 1300 sq. ft. pole barn with lean-to;
- The Coffey Cemetery is to the south of the petition site and uphill;
- There are no scenic areas nearby;

DRAFT

- The location of the proposed pole barn will not be within a Special Flood Hazard Area;
- Conclusion: It would not impair the stability of a natural or scenic area.

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

Findings:

- W Ratliff Road is a local road maintained by the County Highway Department;
- The installation of the pole barn will not interfere with the existing septic system on the petition site;
- The pole barn will meet all other setbacks and design standards;
- Conclusion: It would not interfere with or make more dangerous, difficult, or costly, the use, installation, or maintenance of existing or planned transportation and utility facilities;

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

Findings:

- See Findings under Section A(1) and A(2);
- The zoning of the surrounding adjacent properties is Agriculture/Rural Reserve (AG/RR);
- There are more than five (5) AG/RR zoned lots in the area that are not in compliance with lot width;
- Conclusion: The character of the property included in the variance would not be altered in a manner that substantially departs from the characteristics sought to be achieved and maintained within the relevant zoning district;

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

Findings:

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

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

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

Findings:

DRAFT

- See Findings under Section A(1);
- Any proposed structure on this lot requiring a building permit would need a minimum lot width variance;
- Conclusion: Approval of the variance would satisfy the design standard sought to be varied.

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

Findings:

- See Findings under Section A(1);
- The proposed location of the 30'x40' pole barn will not interfere with existing septic system;
- The proposed location of the pole barn will be outside of the Special Flood Hazard Area;
- There are no visible karst features on the site;
- Conclusion: It would not promote conditions detrimental to the use and enjoyment of other properties in the area.

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

Findings:

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

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

Findings:

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

QUESTIONS FOR STAFF – 2008-VAR-53 - Waldon

Kaczmarczyk: Alright, thank you Tammy. Are there any questions for staff? Seeing none. Is the petitioner and would they like to speak? You do not have to if you do not want to.

Behrman: I was looking for the petitioner. I am not sure if they are or not. It would be Chad Waldon.

DRAFT

PETITIONER/PETITIONER'S REPRESENTATIVE –2008-VAR-53 – Waldon

Waldon: Can you hear me? Hello?

Kaczmarczyk: Yes, we can hear you. Do you wish to speak, Chad?

Waldon: No, I don't wish to speak but I am here though.

Kaczmarczyk: Thank you sir. Is there anyone here who wishes to speak in favor of the petition? Seeing none. Is there anyone here that wishes to speak against the petition? Seeing none. Would someone like to make a motion?

SUPPORTERS –2008-VAR-53 – Waldon: None

FURTHER SUPPORTERS - 2008-VAR-53 – Waldon: None

REMONSTRATORS - 2008-VAR-53 – Waldon: None

ADDITIONAL QUESTIONS FOR STAFF – 2008-VAR-53 – Waldon: None

FURTHER QUESTIONS FOR STAFF – 2008-VAR-53 - Waldon

Hosea: I will make a motion.

Kaczmarczyk: Thank you.

Hosea: **In case number 2008-VAR-53, request for a design standards variance to Chapter 804 for Minimum Lot Width, at 9155 West Ratliff Road, I make a motion that we approve the petition.**

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

Wilson: The vote is petition 2008-VAR-53, Waldon Minimum Lot Width Variance. A vote in favor is a vote to approve the variance based upon the findings of fact. Bernie Guerrettaz?

Guerrettaz: Yes.

Wilson: William Hosea?

Hosea: Yes.

Wilson: Mary Beth Kaczmarczyk?

Kaczmarczyk: Yes.

Wilson: Vicky Sorensen?

DRAFT

Sorensen: Yes.

Wilson: Margaret Clements?

Clements: Yes.

Wilson: The variance is approved by a 5 to 0 vote.

The motion in case 2008-VAR-53, Waldon Minimum Lot Width Variance from Chapter 804, in favor of approving the variance, carried unanimously (5-0).

DRAFT

NEW BUSINESS

- 2. 2008-VAR-54** **Anna Hupp Minimum Lot Area Variance from Chapter 804**
- 3. 2008-VAR-55** **Anna Hupp Minimum Lot Width Variance from Chapter 804**
- 4. 2008-VAR-55a** **Anna Hupp Side Yard Setback Variance from Chapter 804**
One (1) 0.93 +/- acre parcel in Bean Blossom Township, Section 32 at 8484
W Chaffin Chapel RD. **Zoned AG/RR.**

BOARD ACTION: Kaczmarczyk introduced the petition.

STAFF ACTION:

Payne: Thanks Mary Beth. This petition is a request for 3 variances. The petition site is located at 8484 West Chaffin Chapel Road in Bean Blossom Township and that is Section 32. It contains about 0.93 acres. The site is currently zoned Agricultural/Rural Reserve. The Comp. Plan has this site designated as Rural Residential. There is some slope on the property but none is impacted by the proposed projects here. Here we have some site photos. On the left is a bird's eye view of the parcel and on the right is a picture of the garage. They are wanting to expand this garage and so that is originally what brought in the need for a variance because they are not quite meeting the minimum lot area or minimum lot width for the zone that they are in. When we were out on site taking photos we realized that there is also an existing carport, which is just to the left garage in the photo on the right here. That actually is encroaching on the side yard setback, so that is the structure that is kicking in the need for a side yard setback variance. Photos again, on the left is a photograph looking towards the back of the carport and I included this photo because you can see that the petitioner neighbor has also built right up to the property line. The photo on the right is just an illustration of the existing garage and carport and off the back of the garage is where the expansion is planned. Here we have the site plan on the left and again just to clarify the garage expansion was the item that kicked in the need for the lot size and width, upon investigation we realized that the carport there indicated in the green is sitting in the setback and will need a side yard setback. On the right here in this slide we have got the petitioner's letter to the Board of Zoning Appeals. In summary here, this has 3 requests; one for Minimum Lot Area, one from Minimum Lot Width and then the Side Yard Setback related to the existing carport. The recommended motion is to approve the design standards variance request from the Minimum Lot Area requirement in Chapter 804, approve the design standards variance request from the Minimum Lot Width requirement in Chapter 804, and approve the design standards variance request from the Side Yard Setback requirement in Chapter 804 of the Monroe County Zoning Ordinance.

RECOMMENDED MOTIONS:

Approve the Design Standards Variance request from the Minimum Lot Area requirement in Chapter 804 of the Monroe County Zoning Ordinance.

Approve the Design Standards Variance request from the Minimum Lot Width requirement in Chapter 804 of the Monroe County Highway Zoning Ordinance.

Approve the Design Standards Variance request from the Side Yard Setback requirement in Chapter 804 of the Monroe County Highway Zoning Ordinance.

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 extend the length of the existing detached garage by 14 feet – the addition would create a 24' x 50' structure;
- The petition site is zoned Agriculture/Rural Reserve (AG/RR) and is 0.93 +/- acres;
- The minimum lot size in AG/RR zone is 2.50 acres;
- The parcel is not platted;
- There is no evidence that the building site is located on sensitive lands;
- There is no known karst on the property;
- There is no evidence that the building would obstruct a natural or scenic view;
- There are other parcels nearby that are under 2.50 acres in size;
- Conclusion: It would not impair the stability of a natural or scenic area;

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

Findings:

- See findings under A(1);
- The parcel is located on W Chaffin Chapel RD which is designated a local road;
- The septic system is located to the north of the existing residential structure and does not interfere with the proposed extension of the garage;
- Conclusion: It would not interfere with or make more dangerous, difficult, or costly, the use, installation, or maintenance of existing or planned transportation and utility facilities;

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

Findings:

- See findings under A(1) and A(2);
- The zoning of adjacent and surrounding properties is Agriculture/Rural Reserve

(AG/RR);

- The proposed structure would meet all design standards for the Agriculture/Rural Reserve (AG/RR) Zoning District;
- Conclusion: The character of the property included in the variance would not be altered in a manner that substantially departs from the characteristics sought to be achieved and maintained within the relevant zoning district;

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

Findings:

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

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

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

Findings:

- See findings under A(1) and A(3);
- Any proposed structure on this lot requiring permit would need a minimum lot size and lot width variance;
- 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(3) and B(1);
- There is no floodplain on site;
- The site drains to the northwest;
- The site is not located in the Environmental Constraints Overlay (ECO) Area;
- The existing location of the residential structure, the proposed extension to the detached garage and existing carport will not interfere with the existing septic system;
- 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:

- There is a hardship in that the property owner cannot do any further development to this existing nonconforming legal lot of record without first receiving a lot size variance;
- Conclusion: The approval, including any conditions or commitments deemed appropriate, is the minimum variance necessary to eliminate practical difficulties in the use of the property;

FINDINGS OF FACT FOR: MINIMUM LOT WIDTH

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

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

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

Findings:

- Approval of the variance would allow the petitioner to develop this pre-existing nonconforming legal lot of record;
- The site is currently about 150 feet wide. The AG/RR zone requires a minimum of 200 feet in lot width;
- The site contains an existing single-family residence with a detached garage;
- The area is not located within the floodplain or the Environmental Constraints Overlay area;
- Conclusion: It would not impair the stability of a natural or scenic area.

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

Findings:

- W Chaffin Chapel Road is a local road maintained by the County Highway Department;
- The septic system is currently located to the north of the existing single family residence

and will not interfere with the proposed garage extension;

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

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

Findings:

- See Findings under Section A(1) and A(2);
- The zoning of the surrounding adjacent properties is Agriculture/Rural Reserve (AG/RR);
- There are other parcels nearby that are zoned AG/RR and have less than a minimum of 200 foot widths;
- Conclusion: The character of the property included in the variance would not be altered in a manner that substantially departs from the characteristics sought to be achieved and maintained within the relevant zoning district;

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

Findings:

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

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

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

Findings:

- See Findings under Section A(1);
- Any proposed structure on this lot requiring a building permit would need a minimum lot width variance;
- Conclusion: Approval of the variance would satisfy the design standard sought to be varied.

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

Findings:

- See Findings under Section A(1);
- The property drains to the southeast;
- The proposed location of the garage expansion will not interfere with existing septic system;
- There is no FEMA floodplain on the site;
- There are no visible karst features on the site;
- Conclusion: It would not promote conditions detrimental to the use and enjoyment of other properties in the area.

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

Findings:

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

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

Findings:

- There is a hardship in that the property owner cannot do any new development on this pre-existing nonconforming legal lot of record without first receiving a lot width variance. The lot was in existence prior to the 1997 zoning ordinance and therefore was made nonconforming by the ordinance.

FINDINGS OF FACT FOR: SIDE YARD SETBACK

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 further development on this pre-existing non-conforming, legal lot of record;
- There are no designated natural or scenic areas nearby;
- The petitioner's site is predominately flat with the majority of the property without steep slopes over 15 percent;
- **Conclusion:** Approval of the variance would not impair the stability of a natural or scenic

area.

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

Findings:

- See Findings A(1);
- W Chaffin Chapel RD is a local road that runs along the southern property line;
- The existing carport is located only 2 feet from the western property boundary, an encroachment of approximately 13' into the side yard setback;
- Residential accessory structures require a 15 foot side setback in AG/RR;
- The existing carport does not have an impact on utilities;
- **Conclusion:** Approval of the variance would not interfere with or make more dangerous, difficult, or costly, the use, installation, or maintenance of existing or planned transportation and utility facilities.

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

Findings:

- See Findings A(1) and A(2);
- The property is zoned Agriculture Rural Reserve (AG/RR);
- The side yard setback in the AG/RR zoning district is 15' for residential accessory structures;
- Surrounding uses are residential and agricultural;
- The Comprehensive Plan designates this area as Rural Residential;
- This is a pre-existing lot that has not changed dimensions since before the current zoning ordinance;
- **Conclusion:** Approval of the variance would not alter the character of the property in a manner that substantially departs from the characteristics sought to be achieved and maintained with the relevant zoning district.

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

Findings:

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

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

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

Findings:

- See Findings A(1), A(2) and A(3);
- The purpose of the side yard setback is to preserve the general character of zoning district;
- **Conclusion:** Approval of the variance would not significantly impact the purposes of the design standard.

(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), (A2) and A(3);
- The lot drains predominately to the southeast and away from the existing carport;
- The existing carport does not interfere with any easements or utilities;
- **Conclusion:** There are no foreseeable detrimental conditions to the use and enjoyment of other properties that would result from the proposed expansion.

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

Findings:

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

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

Findings:

- Practical difficulties have been demonstrated in that the existing location of the residential structure and detached garage combined with the location of the septic constrain the placement of the carport;
- **Conclusion:** Petitioner has applied for three variances, which is the minimum necessary in order to further develop the lot and allow for the proposed garage addition.

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

DRAFT

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 – 2008-VAR-54, 2008-VAR-55, 2008-VAR-55a – Hupp

Kaczmarczyk: Any questions for staff? No questions for staff.

Sorensen: I do have a question for staff, Mary Beth. One of the things that just came to my mind when you were showing the 2 structures would be close together, is there any ruling that for fire protection that structures can only be so close together? There was a big fire here in my addition of 3 houses and we are too close together and they all caught on fire.

Payne: Unfortunately, I don't know what the fire codes state.

Wilson: There are building code requirements in regard to that based upon the type of construction and the type of uses.

Sorensen: Ok.

Vicky, I would like to say related we talked about repositioning the carport but it just didn't make sense to go anywhere else on the lot because of septic constraints. So, we did try to consider other locations.

Sorensen: Alright, thank you.

Nester Jelen: Typically, Vicky, I think it is an 8 foot separation in distance and Rebecca just to clarify is this an after-the-fact permit for the carport?

Payne: Correct, it is.

Nester Jelen: Ok, so it was put in without a permit and now this is rectifying it.

Payne: Correct.

Kaczmarczyk: Any further questions for staff?

Guerrettaz: They will still have to get a building permit though, after-the-fact, is that correct?

Payne: Yes, they will Bernie.

Guerrettaz: So, if there are any issues with the Building Department then we can't supersede the Building Department's requirement, unless we would put that in a motion. Is that correct? Which wouldn't happen but I am just saying.

Nester Jelen: Right we can't supersede them, no.

DRAFT

Guerrettaz: Right, so if the Building Department doesn't issue it then its dead anyway.

Nester Jelen: Yes.

Guerrettaz: I can make a motion.

Kaczmarczyk: Do we want to ask the petitioner if they want to speak first?

Guerrettaz: Sorry.

Kaczmarczyk: I appreciate your enthusiasm, Bernie.

Guerrettaz: Sorry, Madam Chair Person.

Kaczmarczyk: It's ok. Is the petitioner here and would they like to speak?

**PETITIONER/PETITIONER'S REPRESENTATIVE –
2008-VAR-54, 2008-VAR-55, 2008-VAR-55a - Hupp**

Hupp: So, this is Mike and Anna. I just appreciate, oh, what did I do?

Kaczmarczyk: Did you want to speak?

Hupp: Sure.

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

Hupp: Yes.

Kaczmarczyk: Ok, now you can go ahead.

Hupp: Thank you. The main thing is like I said we are looking to add onto our garage for the fact that we are running out of for our personal items such as 4-wheelers and stuff like that, a boat. We just don't feel like leaving it outside and as far as the carport, I will be the first to apologize. I am not going to throw anybody under the bus that could also be on this that I don't know if. But when we bought our carport, the company that we bought it, a local company, said because it is able to be moved and it is not considered permanent, that we did not have to have a permit. So, that is kind of why that was brought up when Rachel and Anna started talking to do all of that. It wasn't that I was trying to hide anything or look past a law, we just didn't know anything about that. Needless to say, she did talk about our neighbor. Their garage was built and I am assuming it was built without a permit years ago but it is pretty close to our property line which is kind of close to our carport. All of this is just an improvement for our livelihood and the aesthetics of our property. I appreciate everyone and thank you very much.

Kaczmarczyk: Does any Board Member have any questions for the petitioner? Seeing none. Is there anyone else here who would like to speak on behalf of the petition?

DRAFT

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

Kaczmarczyk: Is there anyone here who would like to speak against the petition? Alright.

SUPPORTERS –2008-VAR-54, 2008-VAR-55, 2008-VAR-55a – Hupp: None

FURTHER SUPPORTERS - 2008-VAR-54, 2008-VAR-55, 2008-VAR-55a – Hupp: None

REMONSTRATORS - 2008-VAR-54, 2008-VAR-55, 2008-VAR5-5a – Hupp: None

**ADDITIONAL QUESTIONS FOR STAFF –
2008-VAR-54, 2008-VAR-55, 2008-VAR-55a – Hupp: None**

**FURTHER QUESTIONS FOR STAFF –
2008-VAR-54, 2008-VAR-55, 2008-VAR-55a - Hupp**

Guerrettaz: **With respect to cases number 2008-VAR-54, Minimum Lot Area (Acres), 2008-VAR-55, Minimum Lot Width and 2008-VAR-55a, request for the design standards variance for Minimum Lot Area requirements to Chapter 804, design standards variance from Minimum Lot Width requirements to Chapter 804, and Side Yard Setback Variance from Chapter 804 at 8484 West Chaffin Chapel Road, I move that we approve the variances, based on the findings in the report and staff's recommendations.**

Sorensen: **Second.**

Kaczmarczyk: Call the roll, Larry.

Wilson: The vote is on petition 2008-VAR-54, 2008-VAR-55 and 2008-VAR-55a, Hupp Minimum Lot Area, Minimum Lot Width and Side Yard Setback respectively. A vote in favor is a vote to approve all 3 development standard variances. William Hosea?

Hosea: Yes.

Wilson: Mary Beth Kaczmarczyk?

Kaczmarczyk: Yes.

Wilson: Vicky Sorensen?

Sorensen: Yes.

Wilson: Margaret Clements?

Clements: Yes.

Wilson: Bernie Guerrettaz?

DRAFT

Guerrettaz: Yes.

Wilson: All variances are approved by a 5 to 0 vote.

The motion in cases 2008-VAR-54, Anna Hupp Minimum Lot Area Variance from Chapter 804, 2008-VAR-55, Anna Hupp Minimum Lot Width Variance from Chapter 804, and 2008-VAR-55a, Anna Hupp Side Yard Setback Variance from Chapter 804, in favor of approving the variances, carried unanimously (5-0).

DRAFT

NEW BUSINESS

5. 2008-VAR-56

Groschwitz Minimum Lot Size Variance from Chapter 804

6. 2008-VAR-57

Groschwitz Minimum Lot Width Variance from Chapter 804

One (1) 0.83 +/- acre parcel in Washington Township, Section 34 at 1491 E Sample RD. **Zoned AG/RR.**

BOARD ACTION: Kaczmarczyk introduced the petition.

STAFF ACTION:

Myers: Thank you. Can you guys hear me ok?

Kaczmarczyk: Yes.

Myers: Alright. This is case number 2008-VAR-56 and 2008-VAR-57, Groschwitz, Minimum Lot Size variance and Minimum Lot Width variance to Chapter 804. It is located at 1491 East Sample Road and it is zoned Agricultural/Rural Reserve. A little bit of summary here, the petitioner requests 2 design standards variance from Chapter 804 in order to conduct a major renovation/addition to the existing single family residence. The petition site contains approximately 1,248 square foot single family residence and a 576 square foot detached garage. The petitioners building permit application for a remodel and an addition was received by the Monroe County Building Department on July 16, 2020. Upon Planning Staff's review of that application it was found that the petition site does not meet the minimum lot size and minimum lot width requirements for the Agricultural/Rural Reserve zone. The current size of the petition site is 0.83 acres and the required is 2.5 acres. The lot width is 160 feet and the requirement is 200 feet. If you did your own research on this property you will notice that Elevate GIS parcel lines do not appear correctly. I want to make that note. Exhibit 2 in the petition report gives a more accurate description of that lot. A lot of these maps here that were created are not depicting the parcel correctly but we are going to go ahead along with them. Here is a location map. It is at 1491 East Sample Road. The current zoning is Agricultural/Rural Reserve. The Comprehensive Plan has it designated as Farm and Forest. Here is the site conditions map. I kind of geo-referenced the survey document that was provided by the petitioner and drew my own parcel lines on there to get you a better idea of what the parcel looks like for this presentation. Those were those 2 pictures. On the parcel size map I did the same here. That parcel highlighted in red is the petition site and the green parcels are other parcels in the area that are zoned Agricultural/Rural Reserve and also do not meet the minimum lot size. Here we have some pictures of the petition site and an aerial photograph of the existing single family residence and detached garage. The property next door is also owned by the petitioner. It is for their business which is Applied Canine Behaviors I believe is the name of the business and they do dog training and dog sittings and those types of uses. Here we have some photographs of the driveway cut as well as East Sample Road. Here are some photographs of the petition site, the driveway again and you can see the detached garage there, as well as some different angles of the existing single family residence. Here we have the petitioner's submitted letter to the Board of Zoning Appeals, stating their intent to do a renovation and addition to the existing residential structure. It should be noted that this petition site was a little bit larger in size prior to some right of way dedication as part of the Monroe County Highway Department's plans to expand on East Sample Road. That previous size shown here on this survey plat was 1.19 acres but that wouldn't have met the minimum requirement either. Since the right of way dedication has

DRAFT

occurred that size has gone down to 0.83 acres. Here is an excerpt from their submitted construction plans and site plan. This one just kind of shows a general architectural plan for the petition site. More of these plans that you can see here as well are included in the petition report if you want to go through those and look at the general construction plan for the project. Overall, all other design standards other than the minimum lot size and minimum lot width will be met in the Improvement Location Permit process. Overall, Planning Staff recommends approval of both design standard variances to Chapter 804 for Minimum Lot Size and Minimum Lot Width, based on the findings of fact and subject to the Monroe County Highway and Drainage Engineer reports. I will now take any questions.

RECOMMENDED MOTIONS

Approve the design standards variance to Chapter 804 for Minimum Lot Size based on the findings of fact and subject to the Monroe County Highway and Drainage Engineer reports.

Approve the design standards variance to Chapter 804 for Minimum Lot Width based on the findings of fact and subject to the Monroe County Highway and Drainage Engineer reports.

FINDINGS OF FACT: Minimum Lot Size

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

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

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

Findings:

- Approval of the variance would allow the petitioner to perform the proposed renovation and addition to the existing single family residence;
- The site contains an existing single-family residence with an detached garage;
- The area is not located within the floodplain or the Environmental Constraints Overlay area;
- Conclusion: It would not impair the stability of a natural or scenic area.

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

Findings:

- E Sample RD is a minor collector road maintained by the County Highway Department. There are currently plans to widen E Sample RD and right-of-way has already been dedicated;
- The site operates on a septic system that will not be interfered with by the proposed renovation and addition;
- Conclusion: It would not interfere with or make more dangerous, difficult, or costly, the

use, installation, or maintenance of existing or planned transportation and utility facilities;

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

Findings:

- See Findings under Section A(1) and A(2);
- The zoning of the surrounding adjacent properties is Agriculture/Rural Reserve (AG/RR);
- This lot cannot be rezoned to Suburban Residential (SR) due to the minimum lot size being less than 1 acre;
- There are approximately eight other parcels within a quarter-mile radius of the petition site that are zoned AG/RR and have less than 2.5 acre lot sizes;
- Conclusion: The character of the property included in the variance would not be altered in a manner that substantially departs from the characteristics sought to be achieved and maintained within the relevant zoning district;

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

Findings:

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

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

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

Findings:

- See Findings under Section A(1);
- Any proposed structure or significant renovation on this lot requiring a building permit would need a minimum lot size and lot width variance;
- Conclusion: Approval of the variance would satisfy the design standard sought to be varied.

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

Findings:

- See Findings under Section A(1);
- The property drains to the south and east;
- The proposed location of the renovation and addition will not interfere with existing septic system;
- There is no FEMA floodplain on the site;
- There are no visible karst features on the site;
- Conclusion: It would not promote conditions detrimental to the use and enjoyment of other properties in the area.

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

Findings:

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

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

Findings:

- There are practical difficulties in that the property owner cannot do any development to this pre-existing nonconforming lot of record without first receiving a lot size and lot width variance, or petitioning a rezone. The lot was in existence prior to the 1997 zoning ordinance and therefore was made nonconforming by the ordinance. The lot was made further nonconforming due to the recent right-of-way dedication for the E Sample Road widening project. A rezone to Suburban Residential is also not a viable option since the net acreage of the lot is less than 1 acre;

FINDINGS OF FACT: Minimum Lot Width

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

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

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

Findings:

- Approval of the variance would allow the petitioner to perform the proposed renovation and addition to the existing single family residence;
- The site contains an existing single-family residence with an detached garage;

DRAFT

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

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

Findings:

- E Sample RD is a minor collector road maintained by the County Highway Department. There are currently plans to widen E Sample RD and right-of-way has already been dedicated;
- The site operates on a septic system that will not be interfered with by the proposed renovation and addition;
- Conclusion: It would not interfere with or make more dangerous, difficult, or costly, the use, installation, or maintenance of existing or planned transportation and utility facilities;

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

Findings:

- See Findings under Section A(1) and A(2);
- The zoning of the surrounding adjacent properties is Agriculture/Rural Reserve (AG/RR);
- This lot cannot be rezoned to Suburban Residential (SR) due to the minimum lot size being less than 1 acre;
- There are a few other parcels within a quarter-mile radius of the petition site that are zoned AG/RR and do meet the minimum 200' lot width at building line;
- Conclusion: The character of the property included in the variance would not be altered in a manner that substantially departs from the characteristics sought to be achieved and maintained within the relevant zoning district;

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

Findings:

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

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

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

Findings:

- See Findings under Section A(1);
- Any proposed structure or significant renovation on this lot requiring a building permit would need a minimum lot size and lot width variance;
- Conclusion: Approval of the variance would satisfy the design standard sought to be varied.

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

Findings:

- See Findings under Section A(1);
- The property drains to the south and east;
- The proposed location of the renovation and addition will not interfere with existing septic system;
- The approved conditional use of “kennel” on the property adjacent to the east is also owned and operated by the petitioner;
- There is no FEMA floodplain on the site;
- There are no visible karst features on the site;
- Conclusion: It would not promote conditions detrimental to the use and enjoyment of other properties in the area.

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

Findings:

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

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

Findings:

- There are practical difficulties in that the property owner cannot do any development to this pre-existing nonconforming lot of record without first receiving a lot size and lot width variance, or petitioning a rezone. The lot was in existence prior to the 1997 zoning ordinance and therefore was made nonconforming by the ordinance. The lot was made further nonconforming due to the recent right-of-way dedication for the E Sample Road

DRAFT

widening project. A rezone to Suburban Residential is also not a viable option since the net acreage of the lot is less than 1 acre.

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 – 2008-VAR-56 & 2008-VAR-57 – Groschwitz

Kaczmarczyk: Any questions for Drew?

Clements: This is Margaret and you said that the property owner owns the lot next door as well. Would the problem be resolved and stay within the code if the 2 properties were merged into 1?

Myers: I do not believe so because that other property is under a different use. They have their business use on there, so if you were to start combining properties there would be an issue of overlapping use of residential and their current operating use.

Clements: But this is a significant variation from the minimum lot size and the minimum lot width that could be adverted should the 2 lots be combined. I mean that is more than, that is less than 50 percent of the minimum lot size. I am just kind of having a hard time seeing how this is the appropriate solution. But maybe some other members of the Board of Zoning Appeals would be able to weigh in on that.

Kaczmarczyk: I do understand the difficulties of combining the properties, especially if one is separate, if one is the business and one is their primary residence. That makes it difficult on many different levels. Any other questions for Drew or anybody on the Board want to address Margaret's questions? Is the petitioner here and would they like to speak?

**PETITIONER/PETITIONER'S REPRESENTATIVE –
2008-VAR-56 & 2008-VAR-57 - Groschwitz**

Groschwitz: Hello, this is Sandra Groschwitz.

Kaczmarczyk: Sandra, I am sorry, what did you say?

Groschwitz: This is Sandra Groschwitz. I don't think so.

Kaczmarczyk: You don't wish to speak, ok, that is fine. You don't have to. Thank you. Is there anybody else here who would like to speak on behalf of the petition? Anyone here who would like to speak against the petition? I am not hearing anything. Would any of the Board members have

DRAFT

more questions or would you like to make a motion?

Guerrettaz: I concur Mary Beth, about what you are saying about combining parcels. I think there are 2 uses and the right of way dedication seems to be a fairly significant part of what they are talking about, so I can go ahead and make a motion.

Kaczmarczyk: Ok, thank you.

SUPPORTERS – 2008-VAR-56 & 2008-VAR-57 – Groschwitz: None

FURTHER SUPPORTERS – 2008-VAR-56 & 2008-VAR-57 – Groschwitz: None

REMONSTRATORS - 2008-VAR-56 & 2008-VAR-57 – Groschwitz: None

**ADDITIONAL QUESTIONS FOR STAFF –
2008-VAR-56 & 2008-VAR-57 – Groschwitz: None**

FURTHER QUESTIONS FOR STAFF – 2008-VAR-56 & 2008-VAR-57 – Groschwitz

Guerrettaz: **With regard to case number 2008-VAR-56 and 2008-VAR-57, request is design standards variance for Minimum Lot Size to Chapter 804 and the Minimum Lot Width to Chapter 804 or 1492 East Sample Road, I move that we approve both variances based on the staff report, the findings contained within and the recommendations by staff and the Highway Department.**

Sorensen: **Second.**

Wilson: I will call the roll now. The motion was to approve both variances, lot area variance and the lot width variance for petitions 2008-VAR-56 and 2008-VAR-57, Groschwitz variance petitions. A vote in favor is a vote to approve both the lot area and the lot width variances. Mary Beth Kaczmarczyk?

Kaczmarczyk: Yes.

Wilson: Vicky Sorensen?

Sorensen: Yes.

Wilson: Margaret Clements?

Clements: No.

Wilson: Bernie Guerrettaz?

Guerrettaz: Yes.

DRAFT

Wilson: William Hosea?

Hosea: Yes.

Wilson: The variances are approved by a 4 to 1 vote.

The motion in cases 2008-VAR-56, Groschwitz Minimum Lot Size Variance from Chapter 804, and 2008-VAR-57, Groschwitz Minimum Lot Width Variance from Chapter 804, in favor of approving both of the variances, carried (4-1).

DRAFT

NEW BUSINESS

7. 2008-VAR-58

Merritt Front Yard Setback Variance from Chapter 833

8. 2008-VAR-59

Merritt Maximum Lot Coverage Variance from Chapter 833

One (1) 0.46 +/- acre parcel in Bloomington Township, Section 16 at 4416 N Thistle DR. **Zoned RE1.**

BOARD ACTION: Kaczmarczyk introduced the petition.

STAFF ACTION:

Behrman: This is one lot that is 0.46 acres in size in Bloomington Township, Section 16. It is located at 4416 North Thistle Drive. It is located just north of Griffy Lake, Griffy Reservoir there in the Marlin Hills Subdivision. It is zoned RE1 and usually a lot size in that area is 1 acre, because this is the former Fringe they do not have to meet the minimum lot requirements. There is a caveat within Chapter 833 that bypasses that. The petitioners are asking for 2 other variances with a pole barn that they are wanting to erect on site. The Comprehensive Plan has it as Conservation Residential. This site is 0.46 acres in size. It is relatively flat. It does gently slope to the south end east of the property and it is a corner lot so it does have 2 front yards and then 2 side yards, which is how we deal with corner lots. This is the petitioner's site plan. The request is for them to build that blue rectangle that says proposed building. It is basically a 28' by 34' pole barn with a lean-to enclosed in it, so that makes it 952' square feet so storage space that they would like to house a boat in. One of the variances is that by adding the structure to the property, it exceeds to maximum building coverage by 494' square feet. In this zone they are only allowed to have a 20 percent maximum building coverage and by adding this structure it bumps it up to 22.46 percent building coverage, which is not too far off. Something I want to note in the site plan here is the septic system that they have drawn on the map and they also do have a utility easement drawn in yellow that is in the plat and it is on the east side of the property. The petitioners are currently not requesting a separate driveway entrance to access this building it would just be along the green little path that they have designated there. One other thing that I will say is that they requesting to encroach 28' feet into the 30' foot setback, so the entire structure would be in the setback. I will have a different photo that depicts that in a second. In Marlin Hills Subdivision, this subdivision is platted with a 60' foot right of way, which is shown in yellow on the map. Basically the petitioner needs to meet that 30' foot or right of way from the center line of the road and then the plat also designates a 30' foot setback from right of way. Not all local roads have to abide by this but this platted subdivision, this is the character of the area. They have the homes a little bit farther setback from the roadway. Technically, they should be 60' feet from the centerline of the road and that is adding both the right of way and the required setback. In this case they are fully encroaching 100 percent into the front setback and they are requesting to be just 2' feet off of the right of way. One other thing I would like to explain is that they are Lot 1 in the Marlin Hills Subdivision and then there is another plat just to the east of them where the red square is on the map that starts the right of ways are platted differently. There is a drastic difference here and the road design is drastically different in that next to the petitioners site it is a 28' foot wide road and then it suddenly bumps down to a 16' foot wide road. So, it is a little tricky when you are driving through there to suddenly have to slow down it is just something that I thought was interesting that is right next to the petition site. The upper picture on the right hand side just up at the fence is where their structure is proposed to go. The bottom picture is showing where we have this road change from 28' to 16' feet with that transition there. The upper picture is looking west down North Audubon Drive and also the bottom

DRAFT

picture is looking west down North Audubon Drive but kind of more looking toward the petitioners home and where they would locate this structure. You can kind of see the that in the background. You can also see the boat in the upper picture, which is what they would like to store in the site. The bottom picture, somewhere in there is their septic field and their septic was built in 1955. These are a couple of aerial shots. All in all staff was doing some analysis of setbacks in the area, character of the area, most of those houses are meeting the setbacks that are required. There are a handful that are encroaching 5' feet in some cases with their house and then we have one just to the south of the petition site that has a 10' foot encroachment with that covered pull through on the driveway. Again this is the Marlin Hills Subdivision plat. This is the petitioners letter with the request, also the site map that I put in there one more time. The Marlin Hills Subdivision showing these very uniformed, platted lots and these are all on septic systems at this point and time. In the right hand side you can see that the petition is Lot 1 and we are seeing that transition of right of way dedication between the Marlin Hills Subdivision and Northcliff. I did have the Highway Department take a look at this and they were mostly looking at it from vision, like a sight distance standpoint and they did some calculations and they did not think that sight distance at the intersection of Audubon and Thistle would be impeded by having the structure as close as it is being 2 feet off of the right of way. I also starting thinking about the septic system because I did reach out to the Health Department and they have no records of the septic field/septic system, they didn't have anything on file I think because of the age of this subdivision. I talked to the petitioners about what they knew about this septic system trying to get a little bit more information which still to me felt really vague. I went back to the Health Department and talked to them extensively about maybe should it be damaged during the construction of the structure what does it take to maybe repair the system and they said they should definitely have a Repair Permit on file in case something does go wrong during construction. If it leads to that, the only way to know where a septic field is, is to do some ground penetrating radar studies. If they go on with this project they should be prepared to also put in a brand new presby system should there be some sort of damage to the system because they are just not sure where it is. We did have some remonstrance for this case once staff had completed their report and I think only one letter made it into the packet. It came in the day we were publishing. I also did get a phone call from a concerned neighbor. She had some concerns about the size of the structure and the business motives that were maybe going to take place in there. She thought it would be great to have an affidavit on file to make sure that it is for a non-business use. I also had another neighbor that was emailing in regard to the size of the structure, the aesthetics, like what it would do to the neighborhood, and I took a quote from their email stating that they thought this was maybe more appropriate for like a shed not a structure that is shown there in the bottom left corner, which was not given to me by the petitioner by came through by way of one of the neighbors. I did have one more remonstrance letter that came in at 4 o'clock yesterday so I was able to send that out with the reminder this morning for the BZA Meeting, so you all hopefully had a chance to look at this one. With the 4 people that did call in here is kind of a summary; they like the neighbors but they wanted to remain anonymous just to not rock the boat. They were really concerned about the size of the structure, the location and what the use will be for the structure because I believe one of the owners is affiliated with a tree trimming business and he does drive a truck for them. We had a conversation with Planning Staff to confirm that they were going to only use this for residential storage purposes. A Home-Based Business is not permitted in this zone. A Home Occupation is and a Home Occupation is very specifically required to be within the home or an attached garage. This will not be attached so should they start doing business like activities out of this structure, it is not permitted and would maybe be an uphill

DRAFT

battle with how to get that approved. Again, the remonstrators were concerned that this would just change the character of the neighborhood. It is pretty uniform. A lot of people walk out there. With that the recommended motion is in case 2009-VAR-58, is to deny the design standards variance to Chapter 833 for Front Yard Setback, based on the findings of fact, specifically Findings A(2), A(3), and B(1). This has to do mostly with the character of the area, any future expansion along the road because should sewer go in or sidewalks or other utilities someday having a structure that is just 2' feet off the right of way may become an issue. B (1) is kind of tied into that was well. With petition 2009-VAR-59, staff recommends approval of the design standards variance to Chapter 833 for Maximum Lot Coverage, based on the findings of fact and subject to the Monroe County Highway Comments with the following condition;

- 1) Provide a certified survey and a Septic Repair Permit to change the location of the proposed structure that meets buildable area requirements including setbacks.

We didn't think that increase in maximum lot coverage was a very significant change to the 20 percent that is allowed and in fact, if you look at the other zones, especially zones affiliated with Chapter 804, having 80 percent open space is pretty generous, so that 22.46 percent we did not think was a big issue. But we would like to see a better site plan and assurance that a septic system could go there in the future because this is only a 0.46 acre lot. Any questions?

RECOMMENDED MOTION:

Deny the design standards variance to Chapter 833 for Front Yard Setback based on the findings of fact specifically **Findings A(2), A(3), and B(1).**

Approve the design standards variance to Chapter 833 for Maximum Lot Coverage based on the findings of fact and subject to the Monroe County Highway comments with the following condition:

1. Provide a certified survey and septic repair permit to change the location of the proposed structure that meets buildable area requirements including setbacks.

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 petitioner is requesting a 28' encroachment into a 30' platted front yard setback for placement of a 952 sf residential storage structure;
- There is a 1.36 acre Sycamore Land Trust Nature Preserve located adjacent and northwest of the petition site that is surrounded by residences;
- **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:

- The right of way along E Audubon Drive is platted at 60’;
- E Audubon Road is a local road and is 26’ wide;
- The neighborhood is on septic systems;
- There are no sidewalks in the area;
- The petitioner’s lot fronts both N Thistle Drive and E Audubon DR;
- The driveway access for the petition site is off of N Thistle DR;
- The Highway Department has stated that the proposed structure would not impair line of sight issues at the intersection of N Thistle DR and N Audubon DR (Exhibit 4);
- The right of way is reduced from 60’ to 40’ just northeast of the petition site due to differing subdivision plats;
- The road width is reduced from 28’ to 16’ making for a large road type transition for eastbound traffic;
- If the road system is ever improved to the east of the petition site to align with the existing 28’ wide road the structure location in the front setback could cause issues;
- There is a 15’ utility easement along the eastern property line of the petition site;
- The septic system is believed to be located in the southeast corner of the property;
- Sewer has not been installed in this neighborhood;
- **Conclusion:** Approval of the variance would interfere with or make more dangerous, difficult, or costly, the use, installation, or maintenance of existing or planned transportation and utility facilities.

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

Findings:

- See Findings A(1) and A(2);
- The property is zoned Estate Residential 1 (RE1);
- The petitioner’s lot is 0.46 acres as are the surrounding lots;
- The property is Lot 1 is a corner lot of the Marlin Hills Subdivision;
- The Marlin Hills Plat designates a 30’ setback from a 30’ right of way for this lot and all the others in the plat;
- The location of the proposed detached garage is approx. 18’ from the edge of pavement from E Audubon RD, an encroachment of 28’ into the required 30’ setback;
- The proposed location of the structure into the front setback is over a 93 percent increase in the amount allowed;

DRAFT

- The use of the property is residential;
- Most other structures in the Marlin Hills Subdivision adhere to the front yard setbacks;
- The structures that do not meet front setback requirements encroach on average 5' with one structure directly south encroaching 10' into the front setback (see staff analysis and aerial photos);
- The surrounding areas are residential or nature preserve;
- The Comprehensive Plan designates this area as MCUA Suburban Residential;
- The purpose of the front yard setback requirement of 30' when fronting a local road is to preserve the general character of zoning district, provide a buffer between adjacent property owners, and provide an additional buffer of safety from roadways;
- The adjacent Northcliff Subdivision has a platted 20' right of way and requires a 40' front yard setback according to the 1927 plat (Instrument #192700102A) which in total is a similar setback outcome to the Marlin Hills plat;
- **Conclusion:** Approval of the variance would 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(2) and A(3);
- The purpose of the front yard setback requirement of 30' when fronting a local road is to preserve the general character of zoning district, provide a buffer between adjacent property owners, and provide an additional buffer of safety from roadways;
- There is one additional design standards variance required for Maximum Building Coverage to complete the proposed request for the structure;
- **Conclusion:** Approval of the variance would 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), A(2), A(3), and B(1);
- A state a certified survey and septic repair permit would be needed to verify no other utilities will interfere with the size and location of the accessory structure;
- A 15' easement runs north-south along the eastern property line (Exhibit 3);
- The proposed residential storage structure does not appear to interfere the petitioner's septic system according to their statements in Exhibit 5;
- The Health Department does not have any records for the septic system for this lot and they recommended not placing the structure in the back yard;
- Drainage from the site is to the south and east;
- **Conclusion:** There are no foreseeable detrimental conditions to the use and enjoyment of other properties that would result from maintaining the current location of residential accessory structure.

(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 location of the proposed residential storage structure is possibly the only location on the property suitable due to the ambiguity of the location of the septic system;
- Reducing the size of the proposed residential storage structure to meet the 30' setback would reduce the width of the residential accessory structure to zero, as the structure is entirely in the front yard setback;
- A state a certified survey and septic repair permit would be needed to verify no other utilities will interfere with the size and location of the accessory structure and support other placement locations on the property;
- Petitioner has applied for one additional variance for maximum building coverage, which is the minimum necessary in order to obtain an Improvement Location Permit for the residential accessory structure in its proposed configuration;

FINDINGS OF FACT: Maximum Building Coverage 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:

DRAFT

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

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

Findings:

- The petitioner is requesting a 952 sf residential storage structure which would exceed the 20 percent maximum building coverage by 494 sf;
- There is a 1.36 acre Sycamore Land Trust Nature Preserve located adjacent and northwest of the petition site that is surrounded by residences;
- **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:

- The right of way along E Audubon Drive is platted at 60’;
- E Audubon Road is a local road and is 26’ wide;
- The neighborhood is on septic systems;
- There are no sidewalks in the area;
- The petitioner’s lot front’s both N Thistle Drive and E Audubon DR;
- The driveway access for the petition site is off of N Thistle DR;
- The Highway Department has stated that the proposed structure would not impair line of sight issues at the intersection of N Thistle DR and N Audubon DR (Exhibit 4);
- The right of way is reduced from 60’ to 40’ just northeast of the petition site due to differing subdivision plats;
- The road width is reduced from 28’ to 16’ making for a large road type transition for eastbound traffic;
- There is a 15’ utility easement along the eastern property line of the petition site;
- The septic system is believed to be located in the southeast corner of the property;
- An additional 952 sf structure that exceeds the 20 percent maximum building coverage by 494 sf would be a 22.
- **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(2);
- The property is zoned Estate Residential 1 (RE1);
- The petitioner's lot is 0.46 acres as are the surrounding lots;
- The property is Lot 1 is a corner lot of the Marlin Hills Subdivision;
- The Marlin Hills Plat designates a 30' setback from a 30' right of way for this lot and all the others in the plat;
- The maximum building coverage for the RE1 zone is 20 percent;
- RE1 requires 80 percent open space;
- If the 952 sf sized structure is approved the site would have 77.54 percent open space;
- Chapter 802 zones request maximum open space of 40 percent;
- The lot is 0.46 acres or 20,038 sf with twenty percent at 4,008 sf available land for structures. The existing structures already take up 3,350 sf leaving approximately 458 sf available for additional building coverage;
- The proposed 952 sf structure will exceed this design standard by 494 sf;
- The maximum building coverage would be increased to 22.46 percent if the variance is approved for the proposed size of the structure or 2.46 percent over the amount allowed;
- Chapter 833 allows development of substandard lots. If the lot met the minimum acreage of 1 acre, it would allow for buildable of 8712 sf so by comparison it seems reasonable to allow this variance;
- The use of the property is residential;
- The surrounding areas are residential or nature preserve;
- The Comprehensive Plan designates this area as MCUA Suburban Residential;
- 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(2) and A(3);
- The purpose of the maximum lot coverage requirement of 20 percent is to preserve the general character of zoning district, provide a low density of structure among adjacent property owners, and provide an additional open space for utilities, septic systems and vegetation to manage stormwater runoff;
- Should the structure size be approved the lot would still have 77.54 percent without structures;
- There is one additional design standards variance required for Front Setback to complete the proposed request for the structure;
- **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), A(2), A(3), and B(1);
- The proposed residential storage structure does not interfere with any easements to staff knowledge;
- The proposed residential storage structure does not appear to interfere the petitioner's septic system according to their statements in Exhibit 5 in the current location and could possibly relocate further south while maintaining the same footprint;
- The Health Department does not have any records for the septic system for this lot and they recommended not placing the structure in the back yard;
- Drainage from the site is to the south and east;
- **Conclusion:** There are no foreseeable detrimental conditions to the use and enjoyment of other properties that would result from maintaining the current size of residential accessory structure.

(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.

DRAFT

Findings:

- The location of the proposed residential storage structure is possibly the only location on the property suitable due to the ambiguity of the location of the septic system;
- A more detailed information on the septic system could allow the structure of this size to be relocated outside of the setback;
- Reducing the size of the proposed residential storage structure to meet the 20 percent maximum building coverage would reduce the residential accessory structure by 494 sf for a structure of 458 sf;
- Petitioner has applied for one additional variance for front yard setback, which is the minimum necessary in order to obtain an Improvement Location Permit for the residential accessory structure in its proposed configuration;

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 – 2008-VAR-58 & 2008-VAR-59 - Merritt

Kaczmarczyk: Does the Board have any questions for staff?

Sorensen: I have a question. Tammy, when you are saying a pole barn I picture a big barn that you have in the country, in their letter they say it is a storage garage. But you have not seen a picture of exactly what they are wanting?

Behrman: Right. There is a building permit on file. I don't know if that picture is included in it but there was a picture enclosed with one of the remonstrance letters. They shared I think that description of the structure with the HOA and with the required neighbors via email at one point. It was a few slides back tied in with one of the remonstrance letters but there is definitely like a, I think it is a 2-bay garage and then there is a lean-to associated with it as well.

Sorensen: Ok, thank you.

Kaczmarczyk: Any further questions for staff? Is the petitioner here and would they like to speak?

PETITIONER/PETITIONER'S REPRESENTATIVE – 2008-VAR-58 & 2008-VAR-59 – Merritt

Merritt: We are here and I will just make a couple of quick remarks.

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

DRAFT

Merritt: I do.

Kaczmarczyk: Thank you.

Merritt: I thank you all for your time and I hope everyone is drinking their coffee. I feel like there is some further clarification that is needed on what the building is going to be. It will be a pole barn but it will be the identical color of our home. It will also have the identical roof. The roof will be the same color and material as what is going to be on the home. The only thing different would be the material of the building. It is the metal material that will be going on the building. As far as business use, we would not be using it for any business and that is all that I wanted to say. Thank you all for your time.

Kaczmarczyk: Does the Board have any questions for the petitioner?

Guerrettaz: I have got one Mary Beth. Mr. Merritt, I am curious you are pushing the structure closer to Audubon Drive. Is that because it is a front load garage and you are trying to eliminate the amount of driveway you are building to the building or why are you proposing putting it up that far?

Merritt: The reason is to line it up with our backyard gate so when I back the boat in, you can see where I write grass access, I can have a straight shot to the garage door. Does that make sense?

Guerrettaz: Yeah. So, the green is your proposed travel path. So, the doors are going to be off of the, I will just assume north is up, on the west side on that 28' foot dimension or whatever. That is just a straight shot for you. It is a practical matter that you just don't want to have to curve around your house to back in your boat.

Merritt: Yes, sir.

Kaczmarczyk: Any further questions for the petitioner from the Board?

Guerrettaz: One more question. Have you looked at if you lined it up with the back of your fence, how far back would you feel comfortable being able to properly back your boat in? That is a pretty long distance to have to correct to get in there if it's not just a straight shot.

Merritt: Where the word grass is on there that is where the boat is currently. So, I back it up there every time we use it. So, backing the boat up is, maybe somebody would have trouble with it and I don't want to sound like I am full of myself but I can back it up with literally no problem.

Guerrettaz: Ok, so again my question is if you were to shove your building back, I am more concerned with shoving it to the south. Is that south Tammy? Does Audubon runs east to west?

Behrman: Yes, correct.

Guerrettaz: Ok. So, if you had positioned your proposed building further south, how much further south, since you are such a good backer, how much further south could you push that building in

DRAFT

order to still get your boat in your building?

Merritt: We could move it further south. You start to run into a steeper grade and you also start to get closer to the septic and those are the 2 reasons along with the straight shot as to why I asked for it there. But I completely understand what you are saying. There would be room.

Guerrettaz: My concern is just like Tammy said the reason why there are right of way and setbacks is it allows a little bit of room if there public improvements that need to be done such as a sewer. It either forces the municipality to buy your building if they need it or they have to put it on the other side of the road, which may not be ideal for that purpose. Typically a sewer or an easement can be 15' feet. I don't want to get too far in the weeds here but I am wondering if we didn't shove that building back 15 feet'. From the scale of everything it doesn't look like it's too far into the septic and if there was a motion to do that, I would suggest that we do a motion that prior to the construction, just like Tammy has got in her motion, or recommended motion on the second variance, that the Building Permit and the Septic Repair permit has to be sought after and changes to that would have to be made in order to accommodate the 15' feet. I mean, it is an old subdivision. It was put on septic. The thoughts of that at that time that sewer would run there are probably minimal or even didn't exist. So, it's kind of a retrofit on a very old subdivision up in Marlin Hills, which is a very nice subdivision.

Merritt: It is.

Guerrettaz: That is kind of where I am going with it. I don't know if the Board Members have any other thoughts on what I saying there. Instead of 32' feet it would be 47' feet. That dimension of 32 would change to 47. That is all that I have got.

Kaczmarczyk: Anymore questions for the petitioner? Is there anyone here who would like to speak on behalf of this petition?

Nester Jelen: I am not seeing anyone Mary Beth?

Kaczmarczyk: Is there anyone here who would like to speak against this petition?

Nester Jelen: I am not seeing anyone and if anyone does want to speak on behalf or against just unmute yourself.

SUPPORTERS – 2008-VAR-58 & 2008-VAR-59 – Merritt: None

FURTHER SUPPORTERS – 2008-VAR-58 & 2008-VAR-59 – Merritt: None

REMONSTRATORS - 2008-VAR-58 & 2008-VAR-59 – Merritt

Maron-Puntarelli: We have a couple of questions.

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

DRAFT

Maron-Puntarelli: Yes, I do.

Kaczmarczyk: Please state your name.

Maron-Puntarelli: My name is Cecilia Maron-Puntarelli. My husband is here too; Salvatore Puntarelli. Do you want him to take that oath?

Kaczmarczyk: Yes. Do you swear to tell the truth and nothing be the truth, sir?

Puntarelli: I do.

Kaczmarczyk: Ok, thank you.

Maron-Puntarelli: We mainly have a few questions. One question is that the roofs are supposed to match. Our understanding is that the roofs will match so the house will match the pole barn roof, not the other way around.

Puntarelli: So, the question is, is the roof on the house changing to metal also, or?

Merritt: That is correct.

Puntarelli: My question would be able the septic and whether a presby can be built on that slope and that is a question for the Merritts to be ready for that because that is an expensive thing to do if you had to replace that septic. I have replaced 3 in the neighborhood, 2 of which did not even exist so I am a little leery of what that might entail.

Kaczmarczyk: Ok, they would have to seek a Repair Permit so that would cover that I imagine. Thank you. Anyone else wish to speak against the petition?

Nester Jelen: I am not seeing anyone.

Kaczmarczyk: Bernie, I think you had the basic outline of a motion.

ADDITIONAL QUESTIONS FOR STAFF – 2008-VAR-58 & 2008-VAR-59 – Merritt: None

FURTHER QUESTIONS FOR STAFF – 2008-VAR-58 & 2008-VAR-59 – Merritt

Guerrettaz: Yeah, I can try something here. In the matter of case number 2008-VAR-58, I am going to do these separate. In case number 2008-VAR-58, design standards variance for Chapter 833, Front Yard Setback. Is that correct for 58 variance, Tammy?

Behrman: Yes.

Hosea: Bernie, did you say 2008?

Guerrettaz: I did. **2008-VAR-58, design standards variance for Chapter 833 for the Front Yard Setback at 4416 North Thistle Drive.** Is that correct Tammy?

DRAFT

Behrman: Yes.

Kaczmarczyk: Is it 2008 or 2009?

Behrman: Great question.

Guerrettaz: I have 2008.

Kaczmarczyk: It is 8 on the paper and 9 on the screen.

Behrman: It is 8 on the file, so use 2008, please.

Kaczmarczyk: Ok, thank you.

Guerrettaz: Thank you William. I wasn't sure if I was misreading the 8 or what I was doing.

Hosea: I was confused too.

Guerrettaz: **I move that we approve that variance, based on the findings in the staff report and subject;**

- 1) The building be moved and additional 15' feet south. It would be 17' feet off of the right of way instead of 2' feet off of the right of way.**
- 2) Petitioner provide a certified survey and Septic Permit.**

Kaczmarczyk: I will **second** the motion.

Wilson: The motion is on petition number 2008-VAR-56, Merritt Front Yard Setback.

Kaczmarczyk: 58, I believe.

Wilson: Ok, the agenda is wrong. Got it. 2008-VAR-58, Merritt Front Yard Setback from Chapter 833, subject to the condition that the variance only be, that the new setback would be 17' feet off of the right of way line and further conditioned upon a certified survey and obtaining a Septic Repair Permit. Again, the vote would be to approve the variance based upon these conditions. Did I get those ok, Bernie?

Guerrettaz: Yes, I think that hits it, Larry. Thank you.

Wilson: Ok. Again, a vote in favor is a vote to approve the conditions. Margaret Clements?

Clements: Yes.

Wilson: Bernie Guerrettaz?

Guerrettaz: Yes.

DRAFT

Wilson: William Hosea?

Hosea: Yes.

Wilson: Mary Beth Kaczmarczyk?

Kaczmarczyk: Yes.

Wilson: Vicky Sorensen?

Sorensen: Yes.

Wilson: The variance is approved subject to the conditions of the motion.

The motion in case 2008-VAR-58, Merritt Front Yard Setback Variance from Chapter 833, in favor of approving the variance, subject to the conditions as set forth in the motion, carried unanimously (5-0).

Kaczmarczyk: Now, are we doing the other one too or?

Guerrettaz: Yes, I was going to do them separately. I will try to do better this time. **In case number 2008-VAR-59, design standards variance for Chapter 833, Maximum Building Coverage, the address is 4416 North Thistle Drive, I move that we approve the design standards variance to Chapter 833 for Maximum Lot Coverage, based on the findings of fact and subject to the Monroe County Highway comments with the following condition;**

- 1) Petitioner provide a certified survey and Septic Repair Permit to change the location of the proposed structure that meets buildable area requirements and the setback as noted in the first motion of 2008-VAR-58.**

Kaczmarczyk: I will **second** that motion as well.

Wilson: The vote is on petition 2008-VAR-59, Merritt Maximum Lot Coverage variance from Chapter 833. A vote in favor is a vote to approve the variance with the conditions set forth in the report and shown on the screen. Bernie Guerrettaz?

Guerrettaz: Yes.

Wilson: William Hosea?

Hosea: Yes.

Wilson: Mary Beth Kaczmarczyk?

Kaczmarczyk: Yes.

DRAFT

Wilson: Vicky Sorensen?

Sorensen: Yes.

Wilson: Margaret Clements?

Clements: Yes.

Wilson: The variance is approved with the conditions, 5 to 0.

The motion in case 2008-VAR-59, Merritt Maximum Lot Coverage Variance from Chapter 833, in favor of approving the variance, subject to the conditions as set forth in the motion, carried unanimously (5-0).

DRAFT

NEW BUSINESS

9. 2008-VAR-60

Sandoval Side Yard Setback Variance from Chapter 833

One (1) 0.49 +/- acre parcel in Van Buren Township, Section 12 at 2624 S Hickory Leaf DR. **Zoned RS3.5.**

BOARD ACTION: Kaczmarczyk introduced the petition.

STAFF ACTION:

Myers: Thank you. Alright, this is the Sandoval Side Yard Setback variance from Chapter 833. It is located at 2624 South Hickory Leaf Drive and is zoned RS3.5. Summary and background for this petition; the petition site is 0.49 acres located in Van Buren Township at 2627 South Hickory Leaf Drive. This parcel contains a single family home in a residential neighborhood and is south of Walmart and Sam's Club. The current zoning, as I stated before is RS3.5 and the petitioner is requesting a variance of the Side Yard Setback requirement of the Monroe County Zoning Ordinance. The purpose of this variance is to allow the petitioner to retain a recently constructed elevated deck and privacy fence that encroaches 5' feet into the required 8' feet side yard setback in the RS3.5 zoning district. A little bit of history here; the original building permit for deck plans for this petitioner was released on September 19, 2019 by Planning Staff. On July 17, 2020 a revised building permit was issued by Planning Staff to reflect updates from the petitioner that included an outdoor gazebo and an outdoor bathroom. On July 22, 2020 the petitioner added another revision/update to the construction plans, which prompted Planning Staff to do a site visit to ensure that what was being represented on the application was what was actually being built. At that time, Planning Staff did find that the construction of the elevated deck and privacy fence had actually encroached 5' feet into the 8' foot side yard setback. Here we have the location map and the current zoning, which we both have already covered. The Comprehensive Plan has it designated as MUCA Mixed-Use and MUCA Phase 2 has it as Urban Infill Neighborhood. Here is the site conditions map and the slope map. The site is fairly flat and the recently constructed deck does not really appear in these images. You can see some of the start of the construction there but the main portion that is extending into the side yard setback is on the southern portion of the property line, just on the other side of the white fence there that divides these 2 properties. That is where the side yard setback is encroached upon. The petition site does have sewer access. As I stated it is fairly flat. There is no other floodplain or karst features on the site that we are aware of and all of these photographs are just aerial photographs trying to give you an idea of what the back yard looks like. Here are some on the ground photographs of the driveway cut as well as the side yard. The bottom right photograph is from South Hickory Leaf Drive. You can see that stake there that I believe shows where the property line is between these 2 properties. The white fence there and then the raised deck can be seen there by the mouse cursor. Here we come a little bit closer to it. The top left photograph is just walking along that white fence and property line to see where the elevated deck is located. Those fence posts are there those are also part of the deck extension that is part of the encroachment. The right photograph shows that same elevated deck area with the added gazebo roofing and that also is a part of the encroachment into the side yard setback. These other photographs here the one on the right are from the initial staff visit that occurred in late July. There are a few more photographs I think too that show a little bit more of the idea and elevated deck and current configuration for this property. Here we have the Board of Zoning Appeals letter from the petitioner that states how they came to be where they are in this petition. In that letter it talks about how they had some confusion about the permissions of having the

privacy fence and the setbacks there. On the right we have the original site plan that was submitted with the first building permit application that has since then been revised several times by the petitioner. Here we have the 2 ILP's or Improvement Location Permits that were issued to the petitioner. I went ahead and highlighted the sections that we have on these permits that certify where those side yard setbacks are and whose responsibility it is to make sure that those setbacks are met. The first permit on the right was issued September 19th and the revised permit was July 17, 2020. I do notice that there is a typo in that first permit that should say issued 9/19/2019 in the top left corner. This is a Land Use Certificate. I included in the petition packet that there was another variance petition that this property went through and it was regarding a Conditional Use variance for the use of a Home-Based Business and a massage therapy business. I included that in the report as we tried to be as comprehensive as possible for petition sites. My initial review of that information was that it was denied by the Board of Zoning Appeals. But after conversations with the petitioner it came to my understanding and they were able to present evidence that they had actually appealed that decision and were ultimately granted their use as a Home Occupation for the massage therapy. So I just wanted to include this extra bit because it came after petition packet was published. Overall, Planning Staff recommends denial of the design standards variance to Chapter 833 of the Monroe County Zoning Ordinance, based on the findings of fact, specifically findings (C). That is practical difficulties which cannot be reasonably addressed through the redesign or relocation of the development/building/structure existing or proposed and that is because we have those excerpts on those permits that say that the petitioner or the applicant are responsible to know those setbacks and that those setbacks are labeled on those permits. We felt it was necessary to deny or recommend denial for this petition. I will now take any questions.

RECOMMENDED MOTION:

Deny the Design Standards Variance to Chapter 833 of the Monroe County Zoning Ordinance based on the findings of fact, specifically findings (C). Findings (C) found that the petition request does not meet the Chapter 801 definition of “practical difficulties”, criteria (C), which is: *“cannot be reasonably addressed through the redesign or relocation of the development/building/structure (existing or proposed)”*.

FINDINGS OF FACT: Side 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 0.49 +/- acres and is zoned Single Dwelling Residential 3.5 (RS3.5);
- The site is accessed off of S Hickory Leaf DR, a local road;
- The site is not located within an environmentally sensitive area;
- There are no visible karst features on the site or FEMA floodplain;

DRAFT

- There are no designated natural or scenic areas nearby;
- Approval would allow the deck and 14' fence to remain in its current location at an encroachment of 5' into the 8' side yard setback;
- The existing deck and fence 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 site has access to water and a sanitary sewer system via City of Bloomington;
- The existing deck and fence location doesn't negatively impact 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 petition site is zoned RS3.5;
- The use of the petition site and adjacent properties is residential;
- Residential use within RS3.5 requires an 8' side yard setback;
- MCUA Phase 1 designates this area as MCUA – Mixed Use;
- MCUA Phase II designates this area as N1 – Urban Infill Neighborhood;
- **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 side yard setback variance;
- **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) and A(2);
- Approval of the variance would allow the deck and privacy fence to remain in its existing location, which encroaches 5' into the required 8' side 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);
- Practical difficulties do not exist as the property owner could redesign or relocate the elevated deck structure and privacy fence so that it meets the 8' side yard setback requirement.
- **Conclusion:** There are no 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

DRAFT

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

QUESTIONS FOR STAFF – 2008-VAR-60 – Sandoval

Kaczmarczyk: Does the Board have any questions for Drew? Seeing none.

Clements: I have a question. I am sorry. This is Margaret and I was serving on the Board of Zoning Appeals when the business use was approved. I just would like to ask Drew if you were able to certify or not that the nature of the business was to care for disabled persons or people.

Myers: I am sorry, I do not have enough information to talk specifically about the previous petition.

Clements: Ok, thank you.

Kaczmarczyk: Any other questions for staff?

Hosea: I have one. Drew, you said that if this was denied that deck would have to be torn down?

Myers: I believe in the report I state that if it were to be denied, let me check my wording here, if denied the deck and fence will be required to be removed, remodeled or relocated to meet the side yard setback.

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

PETITIONER/PETITIONER'S REPRESENTATIVE – 2008-VAR-60 – Sandoval

Sandoval: Of course.

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

Sandoval: Yes.

Kaczmarczyk: Please state your name.

Sandoval: Moises Lopez Sandoval.

Kaczmarczyk: Ok, thank you. Proceed.

Sandoval: Ok, we did the pool and the hot tub especially for people with disabilities so we can help with the pain and people will live here in the house. 2 years ago with building our fence we called to the Planning and they say the requirement for that is only 3' feet and we will need a specific permit to do that. When I start building the fence on the south side I leave this space, this 3 or 4' feet so there wouldn't be a problem. I talked to my neighbor, Steve, he say he want the

DRAFT

fence over there because already build one and he want to have something private. Ours is so big. (Inaudible) We live here in the house. Would you like to say something?

Dillard: I am Donna Dillard and as far that the privacy fence it is only on that one section. We were under the impression and we talked with the neighbors and the reason we made the deck so big, one of the reasons is because my son is in a wheelchair and that means we can go around the pool all the way around and he can be safe. If we have a privacy fence he can be in his wheelchair and have more freedom knowing that he won't go off the side. Yes it is a privacy fence but it is also a safety thing. My son he is in a wheelchair or he doesn't walk so he has a chance to move around freely with having space. That's it.

Nester Jelen: Thank you. Mary Beth I will note that you are on mute.

Kaczmarczyk: I am sorry. Does the Board have any questions for the petitioner?

Guerrettaz: I have to admit something. I am having a hard time picturing this fence that they are talking about. Drew, can you put up the photo of the fence and how that correlates with the? So, is it the white that we are talking about?

Myers: No, so the white is actually the neighbor's fence. Jackie if you go back one slide I think there is a little bit of a better picture. So, this left photograph shows the posts for the fence and it extends on top of the elevated deck and they had not finished building that fence yet at the time of this site visit that I conducted because they were going through the variance process.

Guerrettaz: Ok, thank you. That is very helpful. I couldn't see a problem with the fence that is where I was struggling. Thanks Drew.

Nester Jelen: I don't see any other questions from the Board.

Sorensen: I have a question, Jackie. The little tiny section between the white fence and what is going up as the new fence, who maintains that? Is that part of the petitioner's property?

Sandoval: I do. It is part of my property.

Dillard: He mows it and keeps the upkeep on it.

Sorensen: Ok, thank you.

Kaczmarczyk: Ok, any more questions for the petitioner? Is there anyone here who would like to speak on behalf of this petition? Anybody?

Nester Jelen: No.

Kaczmarczyk: Anyone ...

Nester Jelen: I see one. Hammock are you in support or remonstrance?

DRAFT

Hammock: I am support. I mean, I am against. My father is the neighbor. I am speaking on behalf of my father.

Kaczmarczyk: Ok, one moment sir. Anyone here want to speak for the petition, on behalf of the petition?

Nester Jelen: I am not seeing anyone.

Kaczmarczyk: Ok. Is there anybody here who would like to speak against the petition?

SUPPORTERS – 2008-VAR-60 – Sandoval: None

FURTHER SUPPORTERS – 2008-VAR-60 – Sandoval: None

REMONSTRATORS - 2008-VAR-60 – Sandoval

Hammock: Yes.

Kaczmarczyk: Ok. Would you raise your hand, sir? Do you swear to tell the truth and nothing but the truth?

Hammock: I do.

Kaczmarczyk: State your name.

Hammock: Troy Hammock.

Kaczmarczyk: Ok, you can proceed, sir.

Hammock: I am speaking on behalf of my father. It was my understanding that the property, it is a setback so I thought it was somewhat county maintained right next to it, like there was an easement or whatnot. But his concern is that he cannot get beside that to maintain it or if there is any issue with it he is not able to get to it because of the encroachment of that on the setback. So, it concerns him that even if there something that I don't know what the rules are there the laws as far as if a fire broke out with that building, it is so close to that fence, that alerts him as well. That is our concern that it is so close on the setback. Not to mention, I don't know if, I am having trouble with my reception but I don't know if as well we are having a discussion about the monstrosity of this as far as the elevation of how high it is going, the building because it over powers over on my father's property. I mean the decking is almost level with his privacy fence to where you can basically oversee the backyard. You pretty much have no privacy at all because of that. That is where we wanted to voice our opinion and I am done.

Kaczmarczyk: Does the Board have any questions for Mr. Hammock?

Guerrettaz: I have got one. I am wondering looking at the picture now that I understand that it's a fence attached to the deck, that fence will block, will be a privacy fence in both directions. Is that

DRAFT

correct? Where those posts are erected there will be a fence that goes along those posts along the full length of the deck. Is that correct?

Dillard: Right, where nobody can, we can't see our neighbors and they can't see us. So, he would have all of the privacy that he wants.

Guerrettaz: Ok. I am looking at page 139, Photo 8, facing east, is that white fence of the neighbor's, and it looks like it is translucent?

Hammock: It is vinyl.

Guerrettaz: Ok. Again, going back to Vicky's question. The area between the deck and that white fence that is owned by the petitioner. Correct?

Hammock: It was my understanding it was the county. It was like an easement when my dad bought the property.

Guerrettaz: An easement or a setback?

Hammock: Maybe it was a setback.

Guerrettaz: Ok. So, you wouldn't need to get on that side of the fence if he is mowing it.

Hammock: His only concern was if he had to do anything with that type of fence that he is not going to have any room because of that encroaching over there on that setback. That was his only worry. Because it is so close.

Guerrettaz: Sure. But that fence is on the property line or I am assuming close to it anyways. So, you have to work out something with Mr. Lopez to get on the other side to work on that fence.

Hammock: Yes, sir. I guess, where we are basically at on this is with all due respect I guess you can pretty much go and build things on setbacks and from that point as for forgiveness. Don't ask for permission but then ask for forgiveness later. That's my understanding.

Nester Jelen: Mr. Hammock, so rules of the meeting, we typically just ask you questions and we can respond to your questions. So, this is a request because we have a petition here and they have submitted a permit and revised that permit and that was found to be the issue. So, what is for discussion tonight for the Board of Zoning Appeals is the issue of the setback on Mr. Sandoval Lopez's property.

Hammock: Ok. I am voicing for my father that's all. He is on here. Thank you.

Kaczmarczyk: Ok. Thank you. Is there anyone else here who wishes to speak against this petition? Anybody Jackie?

Nester Jelen: I am not seeing anyone Mary Beth.

DRAFT

Kaczmarczyk: In that case, does one of the Board members have a motion ready?

ADDITIONAL QUESTIONS FOR STAFF – 2008-VAR-60 – Sandoval

Guerrettaz: I am sorry, William. Drew, there is no problem with the height of this structure, correct?

Myers: The height restrictions for this subdivision I believe are also included on the permit and that is 40' feet.

Guerrettaz: Ok, so the height of that structure is not in question.

Kaczmarczyk: No.

Myers: If I may also add some clarification. I should have included this in the petition report but there is also a subdivision plat available for this property. It is Lot 19 in the Leonard Springs Addition Subdivision and looking at this plat document I can safely say that there is no easement on the shared property line between Lot 19 and Lot 20 to the south. There are easements along the rear property line and the northern property line of Lot 19 but not the southern property line that we are talking about this evening. It is just a setback.

Kaczmarczyk: Ok, any further questions? William did you have a motion?

Hosea: No, I am still thinking about this one. Is it too late to ask Mr. Sandoval a question?

Kaczmarczyk: No, go ahead.

Hosea: Mr. Sandoval, are you prepared to offer any plans to remodel?

Sandoval: It would cost a lot of money.

Dillard: Do you mean as an addition or remodel if you guys say no?

Hosea: Yes, remodel if we say no.

Dillard: It would cost us a lot of money but we have to follow the law and we will do what is right. But yeah, it would hurt but yes we will do what is right.

Sandoval: (inaudible) it is like 2'feet, it would be so, so close. That was the reason we made it bigger because that way the wheelchair would go through.

Hosea: That is all that I have got, thank you.

Clements: That actually brings up a question for me and it may be addressed to attorney, Dave Schilling about practical difficulties involving planning and design for disabled people and how that might impact the practical difficulties criteria of our findings.

DRAFT

Sandoval: Can I say something?

Nester Jelen: One second, Mr. Sandoval. Dave, you are on mute.

Schilling: I guess my thinking is that the practical difficulties are tied to the condition of the land rather than the occupants.

Clements: Ok.

Guerrettaz: I understand Mr. Hammock's question. I didn't want to answer it because I don't like to get into that mode but the thing that I think is going through everyone's mind is, is this a beg for forgiveness later? I don't see it as that scenario. I think that they had multiple conversations and whether it was just a lack of understanding or not, the 3' feet for the fence to be off of the property that is a confusing answer. If that is what they got from staff because I don't think that is in any ordinance that a fence can be right on the line. It is a good practice to keep it a little bit off. He did go through and they have variance procedures and petitions and they have gone through the Building Department to seek out the proper way to go and I don't think that they were misinformed. I am not blaming on staff or on the Building Department but I just think that there was a misunderstanding and I don't think this is a build it and hopefully they don't come scenario. So, with that said I can go ahead and put a motion out there. I'm not trying to rush it but that is kind of where I am coming from folks.

Kaczmarczyk: I consider practical difficulty environmental and economic waste. Is that a practical difficulty?

Schilling: Mary Beth practical difficulty arises from conditions on the property that do not general exist in the area. For example, the property conditions create a relatively unique development problem.

Kaczmarczyk: Ok. Bernie, if you want to go ahead and try to make a motion.

FURTHER QUESTIONS FOR STAFF – 2008-VAR-60 – Sandoval

Guerrettaz: In the matter of case number 2008-VAR-61, design standards variance, Residential Storage Structure to Chapter 802 at, no, no, no, I am sorry. That was my fault, William. Sorry about that folks. I have to go through the petitions on my computer screen and then not have the zoom in front of me, so I have to go back and forth, so I do apologize for wasting everybody's time. **In the matter of case number 2008-VAR-60, Moises Lopez Sandoval, excuse me if I am wrong, request for design standards variance to Chapter 833 Side Yard Setback at 2624 South Hickory Leaf Drive, I move that we approve the variance and I do see practical difficulty, subject to the findings in the staff report and the recommendations by the Planning Staff and anything from the Highway Department.**

Clements: I **second** this. I **second** your motion.

Wilson: The vote is on petition number 2008-VAR-60, Sandoval Side Yard Setback. A vote in

DRAFT

favor is a vote to approve the variance, with the change in the finding from the staff report that the petition request does meet the Chapter 801 definition of practical difficulties, which is cannot be reasonable addressed through redesign or relocation of the development/building/structure, existing or proposed. Again, a vote in favor is a vote to approve the variance with the findings amended to support approval. Bernie Guerrettaz?

Guerrettaz: Yes.

Wilson: William Hosea?

Hosea: Yes.

Wilson: Mary Beth Kaczmarczyk?

Kaczmarczyk: Yes.

Wilson: Vicky Sorensen?

Sorensen: Yes.

Wilson: Margaret Clements?

Clements: Yes.

Wilson: The variance is approved 5 to 0.

The motion in case 2008-VAR-60, Sandoval Side Yard Setback Variance from Chapter 833, in favor of approving the variance with the findings as amended with the motion, carried unanimously (5-0).

DRAFT

NEW BUSINESS

10. 2009-VAR-61 Neal Residential Storage Structure Variance from Chapter 802

One (1) 2.7 +/- acre parcel in Bean Blossom Township, Section 22 at 8458 N Jenner DR. **Zoned AG/RR.**

BOARD ACTION: Kaczmarczyk introduced the petition.

STAFF ACTION:

Behrman: 2 corrections this is actually 2009-VAR-61, which is correct on the slide but incorrect in the packet and also there is a correction in the acreage. It should be 2.84, which is correct in the packet and I think everywhere else except for this slide. Apologies. This is a 2.84 acre lot located at 8458 North Jenner Drive in Bean Blossom Township, Section 22. It is in the Pinewood Subdivision and it is zoned Agricultural/Rural Reserve. It does meet all of the design standard requirements for that subdivision. The Comprehensive Plan has it as a Designated Community. It is located just off the Stinesville area. Our aerials that we have still show this as a vacant lot but in the spring of, I think it was April of 2020, there was a 2,400 square foot pole barn built without any Monroe County permits. The issue with that is there is not a residence on this property so it exceeds the allowed amount which is normally 1,750 square feet. So, the background, yes, it is a Residential Storage Structure. It exceeds the maximum allowed for a structure without a residence on the lot with it. This is a couple of site photos. There is a driveway. They later now have submitted a driveway permit. The site on the bottom here, to the left there is actually a Sinkhole Conservancy Area and staff is going to require a better site plan because even during the site visit it was unclear if this encroached into the Sinkhole Conservancy Area. This was the structure that was built on the site. This is it facing north and I also would like to get a confirmation of the height. I did try to get them to submit a building permit application. They submitted it one hour before this staff packet went out. We were on the verge of continuing it just for lack of information but staff would still like to confirm that it meets the height and is not located within the Sinkhole Conservancy Area. Staff has also revealed you probably saw in some of those other photos that the site was very disturbed. There was a lack of stabilization on the site and we requested that seed and straw the area, which they did do and they also helped by proving where they had placed the notification marker on site. They did finally submit building permit applications, though it isn't quite sufficient. There is a septic on site that we did finally get a permit for that. We have the aerial below just showing some of the clearing that occurred in April of 2020 and before they actually put the structure up. This is part of the Pinewood Subdivision. It is platted. The interesting thing about Jenner Drive is that it terminates just east of the petition site. It is known as Deadman's Hill. When they created this subdivision they got rid of that ingress/egress because it was so dangerous. It is on a dead end road even though from google maps it looks like it connects. To the right there is their initial site plan where they just showed a 40' by 60' floating square. We asked that they showed us a better site plan which is what is next and that still does quite suffice for us. We need a little bit more confirmation that the sinkhole was not infringed upon that was platted on the subdivision with a little bit better setbacks and septic location. Having been out there from staff visit, didn't seem quite right. The recommended motion for 2008-VAR-61 is to deny the design standards variance from the requirements of Chapter 802 of the Monroe County Zoning Ordinance, based on the findings of fact, specifically Finding (C). This is a self-created hardship. They did not come to us for any permits, had they done this we would have let them know that there was a size restriction and maybe they would not have been in this scenario. 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: Residential Storage Structure Exceeding 1750 sf

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 obtain an after the fact building permit for a 2,400 sf residential storage structure;
- The 2.67 acre lot is mostly wooded;
- The petition site is Lot 26 in platted Pinewood Subdivision;
- There are no designated scenic areas adjacent to the petition site;
- There is a Sinkhole Conservancy Area platted on Lot 26;
- 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 N Jenner Drive, a designated local road;
- Driveway permit #2018100 was issued by the Highway Department;
- N Jenner Drive terminates just east of the petition site and will never connect to N Mt Tabor Road due to visibility issues as determined during the platting of Pinewood Subdivision;
- The proposed construction will not interfere with utilities;
- The site is on a recently installed septic system, permit #21980;
- 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);

DRAFT

- 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 650 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 petitioner has a buyer that plans to build a residence in the next year (Exhibit 2);
- 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), A(2), A(3);
- Conclusion: The specific purposes of the design standard sought to be varied would be satisfied.

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

Findings:

- See findings under A (1);
- There is no FEMA floodplain on site;
- Drainage from the existing structure run towards the south and west to existing large ravines;
- Drainage from the proposed pole barn is not expected to interfere with this pattern; Staff required the petitioner to stabilize the site from sediment runoff of which they complied and provided photo documentation;
- The site is buffered by woods to the east, west and south;
- Conclusion: It would not promote conditions (on-site or off-site) detrimental to the use and enjoyment of other properties in the area.

DRAFT

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

Findings:

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

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

Findings: .

- The practical difficulty was self-created and no permit was sought to construct the 2400 sf structure;
- Conclusion: There are **no** 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 – 2009-VAR-61 – Neal

Kaczmarczyk: Any questions for staff?

Sorensen: I have a question. Tammy, if this is denied do they have to tear down the structure?

Behrman: They would have to alter it to get it down to the 1,750 square feet. The only other way that would bring it into compliance is to submit a residential building permit and put a residence on the lot. There is a staff letter that states that they are trying to sell the lot but we don't have a specific timeline of when that would occur. It is just a little vague for the request.

Sorensen: Ok, thank you.

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

Behrman: May I add one more thing?

Kaczmarczyk: Yes.

Behrman: There was a remonstrance letter associated with this petition and I did send it out this morning with the BZA reminder. Oh no, I am sorry, it wasn't. That was a different petition. I did

DRAFT

have one person call in on this petition and they were concerned about the size of this building. They didn't want to make an official remonstrance. They were just not wanting to see these types of buildings built in their neighborhood. It just seemed excessive to them. Ok, so sorry, I did not include that in the PowerPoint.

Kaczmarczyk: That's fine. Is the petitioner here? Jane Neal?

PETITIONER/PETITIONER'S REPRESENTATIVE –2009-VAR-61 – Neal

Bowlen: The petitioner is not here. I am actually sitting in on the meeting on her behalf.

Kaczmarczyk: Ok, sir. Do you swear to tell the truth and nothing but the truth?

Bowlen: Yes.

Kaczmarczyk: State your name, please.

Bowlen: I am A.J. Bowlen.

Kaczmarczyk: Ok, A.J. you can proceed.

Bowlen: It is my understanding from my client, I have a listing on the property, that when they did try to make contact with the county back in the spring, obviously it was right in the height of the shutdown and they said they never received an answer or a call back on it and proceeded with the building. Obviously, they were not aware of the size restriction or they obviously would not have built it to be 2,400 square feet. They had plans at that time they were going to build a house, have since decided not to. That is why it is listed for sale. We have had interest in it. Obviously, until we get this variance and everything in place here we can't really move forward with the transaction. So, I have got a couple of questions I guess. On the building permit application that Tammy said was not sufficient, if I could get more clarification on that so that I could help them with that and may be straighten out any issues there or any questions.

Behrman: I can discuss that with you tomorrow if this does go through. It is basically providing the height of the structure and a better site plan.

Bowlen: Ok. The height measured on each corner or?

Behrman: Something that meets the definition of height and I can send that to you.

Bowlen: Ok, the reason I ask is the elevation is different on both sides.

Behrman: Correct and from one way it looks ok and from the other way I am not sure. That is why we need a few more dimensions.

Bowlen: Ok. As far as altering the building, I am not sure, I mean that would be quite a bit of an expense to try to do that. I am not sure how they would even go about disassembling it at this point

DRAFT

to alter the size so, hopefully we can get something figured out here for them on that. We can definitely get a better site plan drawn up but I am not sure how you alter an existing 40' by 60' structure that has got a concrete floor. I guess, if this gets denied tonight I guess another question is can we apply again and try to get more clarification on some of this or what would the next step be?

Wilson: There is a limit on, I think it is either 6 months or a year to apply again if you have been turned down on a variance. If there is additional information or if it would be helpful for the petitioner to be actually present we could continue it to the next meeting until November, that would be your best bet rather than taking a vote with inadequate information.

Bowlen: If we can continue it to November I think at this point that would be great and I can get with Tammy and I will figure out what else we need to provide for clarification on the permit on the application and then go from there.

Kaczmarczyk: Ok, motion to continue this to November? Do we need a motion?

Guerrettaz: When they come back I would like to make sure that when they submit their, and normally I don't push this unless there is a question and staff has them, make sure that they do submit a site plan, or not a site plan, excuse me, a building permit application that does have an adequate drawing that is to scale and shows exactly what is there.

Bowlen: Of the building itself?

Guerrettaz: Well, whatever is on the building permit application I think Ms. Neal needs to do her due diligence in making sure that she presents something that staff is happy with and the Building Department can utilize in order to help us make a decision and understand physically what is on the property. The other question I have got is and this will help me in the next meeting because I think a continuance is a great idea, you said that they were going to build on the property, did they have a set of plans that they were looking at?

Bowlen: I think they did, yes. They had a couple of different draws they were considering and if we provided those would that help as far as potential?

Guerrettaz: I was just curious. The other question; who built it?

Bowlen: The petitioner's fiancé, basically they built it themselves.

Hosea: I have a question. I thought you said they were trying to sell it, the property?

Bowlen: They are now. They initially were going to build their own house on it. That is why they wanted to build the pole barn. They built the pole barn the size they did because at the time they had a large 5th wheel and that was storage for their 5th wheel and they were going to build a house there. They have since decided not to build. They are going to stay where they are at in a townhouse they purchased last year and have decided to sell the property.

DRAFT

Hosea: So, is the sale contingent upon the Board's decision?

Bowlen: We had an offer initially on the property that was contingent upon the variance and a permit for this being in place, obviously, so that they could then get a building permit for a house, those buyers. That was when we started this process. Those buyers have since moved onto another property, not because of anything related to this, they just found an existing house that they wanted to buy and decided not to buy and build themselves. Yeah, obviously the potential sale of this property, this issue would have to be cleared up and everything taken care of.

Hosea: Ok, thank you.

Guerrettaz: I got one more, sorry, I have got one more question. Ms. Neal knew there was a permitting process it had to go through. So, when she said she didn't get a response, did she try to go do the office, did she call and leave messages, did she send an email? What do you have that shows that she did try to reach out?

Bowlen: I would have to get that information from her because I wasn't involved at that time when they were trying to get that process started. So, I am not sure honestly how many phones calls or if she did send an email, I honestly don't know Bernie.

Guerrettaz: Ok. I am just trying to set the stage a little bit to help me understand for the next meeting. That is all that I have got Mary Beth. Sorry to jump in there like that.

SUPPORTERS – 2009-VAR-61 – Neal: None

FURTHER SUPPORTERS – 2009-VAR-61 – Neal: None

REMONSTRATORS - 2009-VAR-61 – Neal: None

ADDITIONAL QUESTIONS FOR STAFF – 2009-VAR-61 – Neal: None

FURTHER QUESTIONS FOR STAFF – 2009-VAR-61 - Neal

Kaczmarczyk: Do we need a motion to continue this?

Wilson: Yes but I think you can do it by vocal motion.

Kaczmarczyk: **I move that we continue this until the November meeting.**

Guerrettaz: **Second.**

Kaczmarczyk: All in favor, say "aye".

Clements: Aye.

Guerrettaz: Aye.

DRAFT

Kaczmarczyk: Aye.

Sorensen: Aye.

Hosea: Aye.

Kaczmarczyk: Ok, this is continued until the next meeting.

The motion in case 2009-VAR-61, Neal Residential Storage Structure Variance from Chapter 802, in favor of continuing the case until the November 2020 BZA Meeting, carried unanimously (5-0).

DRAFT

NEW BUSINESS

11. 2009-VAR-62 Bartlett Minimum Lot Area Variance from Chapter 804

One (1) 2.0 +/- acre parcel in Bloomington Township, Section 31 at 6899 N Maple Grove RD. **Zoned AG/RR.**

BOARD ACTION: Kaczmarczyk introduced the petition.

STAFF ACTION:

Payne: This petition is a request for a Minimum Lot Size on this parcel for the purpose of constructing 51' foot by 24' foot carport. The site contains approximately 2 acres but in the Agricultural/Rural Reserve zone, which is what this parcel is zoned, 2.5 acres are required. The petition site is located at 6899 North Maple Grove Road in Bloomington Township, Section 31 and again it is zoned Agricultural/Rural Reserve. There is some slope present on the lot but it is not at all impacted by the proposed location of the carport. The Comp Plan has the site designated as Rural Residential. Here are some site photos. On the left I just shot a photograph of the place where they would like to put the carport. The picture on the right is just a different angle of the location of where they want to put the carport. In the left picture we are looking north and in the right picture we are looking south down North Maple Grove Road. I do want to mention that there are other parcels in the vicinity that do not meet the minimum lot size. If this variance request is approved, I want to note that the parcel does meet all other design standards. We are just looking for the minimum lot size. On the left is the petitioner's letter to the Board of Zoning Appeals and on the right is the site plan. Staff does recommend approval of the design standards variance to the Minimum Lot Size standard in Chapter 804 of the Monroe County Zoning Ordinance, based on findings of fact.

RECOMMENDED MOTION:

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

FINDINGS OF FACT: Minimum Lot Size Standard

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

(D) 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 place a 24' x 51' carport on the petition site;
- The petition site is zoned Agriculture/Rural Reserve (AG/RR) and is 2.00 +/- acres;
- The minimum lot size in AG/RR zone is 2.50 acres;

DRAFT

- The parcel is not platted;
- There is no evidence that the building site is located on sensitive lands;
- There is no known karst on the property;
- There is no evidence that the building would obstruct a natural or scenic view;
- There are other parcels nearby that are under 2.50 acres in size (see Exhibit 3);
- Conclusion: It would not impair the stability of a natural or scenic area;

(5) 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 located on N Maple Grove RD which is designated a local road;
- Conclusion: It would not interfere with or make more dangerous, difficult, or costly, the use, installation, or maintenance of existing or planned transportation and utility facilities;

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

Findings:

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

(7) 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;

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

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

Findings:

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

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

Findings:

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

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

Findings:

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

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

Findings:

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

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

DRAFT

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 – 2009-VAR-62 - Bartlett

Kaczmarczyk: Any questions for staff?

Clements: I have one. It has to do with so many variations to the minimum lot size standards tonight and it seems as though it will set a precedence like you mentioned in this neighborhood and wonder what is the pressure, the overwhelming pressure to change the minimum lot size and everything? I wonder if staff could answer that question for me.

Nester Jelen: Margaret, we have seen kind of an unprecedented number of building permits come in the past few months. We didn't see hardly any in March and April and now they are coming in and we are actually exceeding where we were this time last year. So, a lot of these variance requests relate to the volume of building permit applications that we receive in the office. I do think as far as the lot width and lot size requirements in county, if people have had their homes or their properties for a long time and haven't done any development since before the ordinance in 1997, they would have never known that they didn't have the right lot size or lot width, so it is something that we want to address in the new zoning ordinance. I don't know if anyone else has anything else to add.

Kaczmarczyk: Does that answer your question?

Clements: Thank you.

Kaczmarczyk: Any other questions of staff? Seeing none. Are Greg and Monica Bartlett here and would you like to speak?

PETITIONER/PETITIONER'S REPRESENTATIVE – 2009-VAR-62 – Bartlett

Kaczmarczyk: I assume you do not want to speak?

Bartlett: No.

Kaczmarczyk: Ok. Is there anybody here who wishes to speak on behalf of this petition?

Nester Jelen: I am not seeing anyone Mary Beth.

Kaczmarczyk: Anyone here wish to speak against this petition?

Nester Jelen: I am not seeing anyone.

Kaczmarczyk: Ok, is one of the Board members ready to make a motion?

SUPPORTERS – 2009-VAR-62 – Bartlett: None

DRAFT

FURTHER SUPPORTERS – 2009-VAR-62 – Bartlett: None

REMONSTRATORS - 2009-VAR-62 – Bartlett: None

ADDITIONAL QUESTIONS FOR STAFF – 2009-VAR-62 – Bartlett: None

FURTHER QUESTIONS FOR STAFF – 2009-VAR-62 – Bartlett

Hosea: I will make a motion. **In case number 2009-VAR-62, for design standards variance to Chapter 804 for Minimum Lot Size standard at 6899 North Maple Grove Road, I move that we approve the variance based on the findings of fact and the recommendations of the Planning Committee.**

Kaczmarczyk: I will **second** that motion. Larry, you want to call roll.

Wilson: Yes, the vote is petition 2009-VAR-62, Bartlett Minimum Area Variance. A vote in favor is a vote to approve the variance based upon the findings of fact in the staff report. William Hosea?

Hosea: Yes.

Wilson: Mary Beth Kaczmarczyk?

Kaczmarczyk: Yes.

Wilson: Vicky Sorensen?

Sorensen: Yes.

Wilson: Margaret Clements?

Clements: Yes.

Wilson: Bernie Guerrettaz?

Guerrettaz: Yes.

Wilson: The variance is approved 5 to 0.

The motion in case 2009-VAR-62, Bartlett Minimum Lot Area Variance from Chapter 804, in favor of approving the variance, carried unanimously (5-0).

DRAFT

NEW BUSINESS

12. 2009-VAR-63

Hensley Minimum Lot Area Variance from Chapter 804

13. 2009-VAR-64

Hensley Minimum Lot Width Variance from Chapter 804

One (1) 3.04 +/- acre parcel in Polk Township, Section 32 at 9451 S Chapel Hill RD. **Zoned FR.**

BOARD ACTION: Kaczmarczyk introduced the petition.

STAFF ACTION:

Payne: This is a petition for property located at 9451 South Chapel Hill Road, in Polk Township, Section 32. The current zoning is Forest Reserve. There is some slope present on this parcel but it will not be impacted by the proposed modular home that is planned for the lot. The Comp Plan has this designated as Farm and Forest. Here we are looking at the parcel. There was at one point a mobile home on this lot and there is remnants of the concrete foundation that was connected to that home and then there is also a gravel footprint which was again related to the old mobile home that was at the lot. The petitioner is actually going to push the location of the new home slightly away from that existing footprint but some of it will be incorporated in the new design. It is hard to see in these photos but the lot actually has an existing semi-circle driveway and the Highway Department has required in their permit that the west driveway point be removed. So, I did want to note that in this case. Here is a bird's eye view. You can see several of these lots. Again this is a Minimum Lot Area variance request and a Minimum Lot Width variance request. I didn't highlight it but you can see that the adjacent lots are very similar in dimensions to the parcel involved in this petition. Letter to the BZA on the left. Again, the petitioner is wanting to place a modular home at this location, possibly to be used in the future for retirement purposes. On the right is the site plan and you can see the semi-circle driveway has been illustrated. Again, one of the access points will be removed as a requirement of the driveway permit. You can see the location of the proposed house, its relation to septic and there is an existing carport on the lot that they intent to keep for now. Just wanted to throw in again that the driveway permit has been issued for this location with the requirement that the west driveway entrance be removed. The recommended motion is to approve the design standards variance request from the Minimum Lot Area requirements and the Minimum Lot Width requirements in Chapter 804 of the Monroe County Zoning Ordinance. Any questions?

RECOMMENDED MOTIONS:

Approve the Design Standards Variance request from the Minimum Lot Area requirement in Chapter 804 of the Monroe County Zoning Ordinance.

Approve the Design Standards Variance request from the Minimum Lot Width requirement in Chapter 804 of the Monroe County Highway Zoning Ordinance.

FINDINGS OF FACT – Minimum Lot Area (acres)

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

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

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

Findings:

- Approval of the variance would allow the petitioner to develop this pre-existing nonconforming legal lot of record;
- The site contains an existing residential accessory unit (carport);
- The area is not located within the floodplain or the Environmental Constraints Overlay area;
- Conclusion: It would not impair the stability of a natural or scenic area.

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

Findings:

- S Chapel Hill Road is a local road maintained by the County Highway Department;
- The septic system is located to the southwest of the proposed residential structure and does not interfere with the proposed location of the structure;
- One of the existing driveway access points will be removed;
- Conclusion: It would not interfere with or make more dangerous, difficult, or costly, the use, installation, or maintenance of existing or planned transportation and utility facilities;

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

Findings:

- See Findings under Section A(1) and A(2);
- The zoning of adjacent and surrounding properties is Forest Reserve (FR);
- All proposed structures will meet required design standards for the FR zoning district;
- Conclusion: The character of the property included in the variance would not be altered in a manner that substantially departs from the characteristics sought to be achieved and maintained within the relevant zoning district;

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

Findings:

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

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

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

Findings:

- See Findings under Section A(1);
- Any proposed structure on this lot requiring a building permit would need a minimum lot size and lot width variance;
- Conclusion: Approval of the variance would satisfy the design standard sought to be varied.

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

Findings:

- See Findings under Section A(1);
- The property drains to the south;
- The existing location of the residential accessory unit (carport) and proposed location of residential structure will not interfere with existing septic system;
- There is no FEMA floodplain on the site;
- There are no visible karst features on the site;
- Conclusion: It would not promote conditions detrimental to the use and enjoyment of other properties in the area.

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

Findings:

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

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

Findings:

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

FINDINGS OF FACT FOR: MINIMUM LOT WIDTH

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

DRAFT

a design standards variance, the Board must find that:

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

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

Findings:

- Approval of the variance would allow the petitioner to develop this pre-existing nonconforming legal lot of record;
- The site is approximately 145 feet wide. The FR zone requires a minimum of 200 feet in lot width;
- The site contains an existing 15' x 20' carport;
- The area is not located within the floodplain or the Environmental Constraints Overlay area;
- Conclusion: It would not impair the stability of a natural or scenic area.

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

Findings:

- S Chapel Hill RD is a local road maintained by the County Highway Department;
- The septic system is currently located to the southwest of the location of the proposed single family residence and will not interfere with the proposed residential structure location;
- Conclusion: It would not interfere with or make more dangerous, difficult, or costly, the use, installation, or maintenance of existing or planned transportation and utility facilities;

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

Findings:

- See Findings under Section A(1) and A(2);
- The zoning of the surrounding adjacent properties is Forest Reserve (FR);
- There are other parcels adjacent to and nearby that are zoned FR and have less than a minimum of 200 foot widths;
- Conclusion: The character of the property included in the variance would not be altered in a manner that substantially departs from the characteristics sought to be achieved and maintained within the relevant zoning district;

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

Findings:

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

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

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

Findings:

- See Findings under Section A(1);
- Any proposed structure on this lot requiring a building permit would need a minimum lot width variance;
- Conclusion: Approval of the variance would satisfy the design standard sought to be varied.

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

Findings:

- See Findings under Section A(1);
- The property drains to the south;
- The proposed location of the residential structure will not interfere with existing septic system;
- There is no FEMA floodplain on the site;
- There are no visible karst features on the site;
- Conclusion: It would not promote conditions detrimental to the use and enjoyment of other properties in the area.

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

Findings:

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

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

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

Findings:

- There is a hardship in that the property owner cannot do any new development on this pre-existing nonconforming legal lot of record without first receiving a lot width variance. The lot was in existence prior to the 1997 zoning ordinance and therefore was made nonconforming by the ordinance. Adjoining parcels to the north and south also do not meet minimum lot width.

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 – 2009-VAR-63 & 2009-VAR-64 - Hensley

Kaczmarczyk: Any questions for staff? Not seeing any questions for staff. Is the petitioner here?

Nester Jelen: Bernie, you had ad question?

Guerrettaz: Yeah, I am sorry, this is kind of with Margaret's observation, which was a good one earlier that it is not a problem with the building or the fact that they want to put the carport, it is the fact that the existing parcel does not meet the current zoning.

Payne: That is right.

Guerrettaz: So, it is kind of 2 unrelated things there which is why this is a variance request. Am I correct?

Payne: You are correct. The lot is not meeting minimum requirements for area or width.

Kaczmarczyk: Any further questions for staff? Is the petitioner here and would they like to speak?

**PETITIONER/PETITIONER'S REPRESENTATIVE –
2009-VAR-63 & 2009-VAR-64 – Hensley**

Hensley: Yes, I am here and yes, I would like to speak.

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

Hensley: I do.

DRAFT

Kaczmarczyk: Please state your name.

Hensley: Kristy Hensley.

Kaczmarczyk: Ok, Kristy, please go ahead.

Hensley: I just want to add and it is noted in the report that we have owned this property for 20 years and had no idea of these new ordinances had been put in place. We were already well in the process of having a home built when we found this out that now there is a new 5 acre minimum requirement when we only own 3. So, we have got \$20,000 worth of investment already made into this before we found this out. It should result in an increased property value significantly for the whole area, so there are a lot of positives with this. So, anyway I just hope that we can get this approved and I appreciate your time.

Kaczmarczyk: Thank you. Does any of the Board members have any questions for the petitioner? None? Is there anybody else here who wishes to speak in favor of this petition? Seeing none. Is there anyone here who wishes to speak against the petition? Seeing none. Does one of my fellow Board members have a motion?

SUPPORTERS – 2009-VAR-63 & 2009-VAR-64 – Hensley: None

FURTHER SUPPORTERS – 2009-VAR-63 & 2009-VAR-64 – Hensley: None

REMONSTRATORS - 2009-VAR-63 & 2009-VAR-64 – Hensley: None

ADDITIONAL QUESTIONS FOR STAFF – 2009-VAR-63 & 2009-VAR-64 – Hensley: None

FURTHER QUESTIONS FOR STAFF – 2009-VAR-63 & 2009-VAR-64 – Hensley

Kaczmarczyk: Bernie?

Guerrettaz: Yes, I am trying. Am I muted or not? I can't tell.

Kaczmarczyk: No, you are on.

Guerrettaz: Alright, sorry. **In case number 2009-VAR-63, Minimum Lot Area and case number 2009-VAR-64, Minimum Lot Width, request is for design standards variance from Minimum Lot Area requirements of Chapter 804, design standards variance from Minimum Lot Width requirements of Chapter 804 at 9451 South Chapel Hill Road, I move that we approve both variances, subject to the staff report and findings and that the requirements of the Monroe County Highway Department be met with respect to the west driveway being removed.**

Kaczmarczyk: You hit it. I **second** it. Larry?

Wilson: Ok, the vote is on petition 2009-VAR-63 and 2009-VAR-64, the Hensley Minimum Lot

DRAFT

Width and Lot Area variances respectively. The vote it to approve based upon the findings and with the conditions in the staff report including removal of the driveway as requested by the Monroe County Highway Department. Again, a vote in favor is a vote to approve the variances with the conditions. Mary Beth Kaczmarczyk?

Kaczmarczyk: Yes.

Wilson: Vicky Sorensen?

Sorensen: Yes.

Wilson: Margaret Clements?

Clements: Yes.

Wilson: Bernie Guerrettaz?

Guerrettaz: Yes.

Wilson: William Hosea?

Hosea: Yes.

Wilson: Variances are granted 5 to 0 with conditions accompanying the motion.

The motion in cases 2009-VAR-63, Hensley Minimum Lot Area Variance from Chapter 804, and 2009-VAR-64, Hensley Minimum Lot Width Variance from Chapter 804, in favor of approving the requests with conditions as set forth in the motion, carried unanimously (5-0).

DRAFT

NEW BUSINESS

14. 2009-VAR-65 Eldon Environmental Constraints Overlay Area 2 (15% Slope) Ch.825
One (1) 2.76 +/- acre parcel in Salt Creek Township, Section 21 at 7212 E Pine Grove RD. **Zoned CR/ECO2.**

BOARD ACTION: Kaczmarczyk introduced the petition.

STAFF ACTION:

Nester Jelen: This one is a variance request for the Environmental Constraints Overlay Area 2, so that is 15 percent slope. The property is located off of East Pine Grove Road and the request is that they would like to modify this deck area here and build onto it, I believe it was 20' by 26' addition onto the south side of the home. This is the request and then it would be a multi-level addition here and because of the slope area between the home and as you can see on the screen here there is kind of a driveway to the barn area, they are asking for the ECO 2 variance. Here is the property location in Slat Creek. The Comprehensive Plan has this as Rural Residential. It is zoned Conservations Residential. It is meeting all other design standards. As you can tell, the property is very constrained...

Kaczmarczyk: We are not seeing your screen, Jackie.

Nester Jelen: Thank you, Mary Beth.

Guerrettaz: Thank you Mary Beth. I thought I was having a moment there.

Nester Jelen: Sorry, let me back up a second. You guys could have stopped me earlier.

Kaczmarczyk: Well, we read our packets.

Nester Jelen: Well, I am glad you read the packet. This is a photo here of the addition that they would like to add to the home. It is a 20' by 26' addition and they would be modifying the location of the existing deck here and adding on this multi-level addition to the south side of the home. This is the ECO 2 variance for 15 percent slope and so the area is pretty slope constrained as you can see from the image on the left and they are very limited on where they can actually build an addition on this property. I have also highlighted yellow they have an existing holding tank, which they acquired the property recently and worked with the Health Department and they are actually going to be installing a presby system, which is in the green. That area is actually less slope constrained than the area up by the house. This is the single family residence. This is the barn area, so part of this they would be putting in a new septic system. I just wanted to include some information on this 20' by 26' addition on the footprint. It is multi-level as I mentioned before and this is the area here. They will be kind of removing this deck portion here to the extent where I show the mouse and then extending it out this way towards the photo on the right toward you. This is their driveway area. As you come in you kind of have a choice to go to the left of the home or you can go to the right which is used as a barn area. The recommended motion by staff is to approve the ECO 2 variance subject to one condition which is;

- 1) The submission and approval of a grading permit and erosion control plan to be reviewed by the Monroe County Planning Dept. and Highway Dept.'s MS4 Operator.

DRAFT

I will take any questions.

RECOMMENDED MOTION:

Approve the design standard variance from the ECO Area 2 (15% slope) land disturbance restriction of Chapter 825 of the Monroe County Zoning Ordinance based on the findings of fact and subject to the following condition:

1. The submission and approval of a grading permit and erosion control plan to be reviewed by the Monroe County Planning Dept. and Highway Dept.'s MS4 Operator.

FINDINGS OF FACT: Environmental Constraints Overlay Area 2 (ECO 2)(15% Slope)

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

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

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

Findings:

- Approval of the variance would allow the petitioner to add a 680 sq. ft. footprint addition to an existing home on a 2.76+/-acre;
- The site holds a 2,365 sq. ft. single family residence built in 1996, a 1,368 sq. ft. detached garage built in 2004, and a 648 sq. ft. utility shed built in 1996;
- The petitioners are requesting one variance in order to add a 20x26 addition to the south side of the single family residence, and a 160 sq. ft. attached porch;
- The south side of the home contains a wraparound porch. Approximately 200 sq. ft. of the porch will be removed for the addition to occur. The area that will be disturbed appears to be partially manmade from the original construction of the residence in 1996;
- The lot and surrounding area is zoned Conservation Residential (CR) and ECO Area 2;
- The site is platted within the Pine Grove Estates Subdivision;
- There are no designated scenic areas adjacent to the petition site;
- There is no evidence that the addition would obstruct a natural or scenic view;
- Conclusion: It would **not impair** the stability of a natural or scenic area.

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

Findings:

- See findings under A (1);
- The property has access from E Pine Grove RD, a designated local road;
- The proposed construction will not interfere with water lines or the septic system;
- The existing holding tank is located further away from the home and proposed addition.

DRAFT

The proposed septic location will occur in less steep areas south of the barn;

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

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

Findings:

- See findings under A(1) and A(2);
- The proposal would meet all other Chapter 804 design standards;
- 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,

DRAFT

Findings:

- See Findings under Section A and B(1);
- There is no FEMA floodplain on site;
- Drainage from the existing structures run towards the southwest. Drainage from the proposed addition is not expected to interfere with this pattern;
- Conclusion: It **would not** promote conditions detrimental to the use and enjoyment of other properties;

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

Findings:

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

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

Findings:

- The existing home and proposed location of the addition is located in sloped areas greater than 15%;
- The petition site is located within the ECO Area 2 and consists of mainly slopes over 15%, making further development difficult;
- Petitioner has applied for one variance, which is the minimum necessary to add an addition to the existing Single Family Residence;
- The majority of homes within the Pine Grove Estates Subdivision also experience steep slopes exceeding 15%;
- 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.

DRAFT

QUESTIONS FOR STAFF – 2009-VAR-65 – Eldon

Kaczmarczyk: Does the Board have any questions for Jackie? I see no questions. Is the petitioner here and would they like to speak?

PETITIONER/PETITIONER'S REPRESENTATIVE – 2009-VAR-65 – Eldon

Eldon: I am here. I don't know if I have a lot to add to that though.

Kaczmarczyk: You don't have to speak if you don't want to, sir.

Eldon: Ok, I am here for questions.

Kaczmarczyk: Alright, is there anyone else here who would like to speak on behalf of this petition? Is there anyone here who would like to speak against this petition? None. Does one of my fellow Board members have a motion, please?

SUPPORTERS – 2009-VAR-65 – Eldon: None

FURTHER SUPPORTERS – 2009-VAR-65 – Eldon: None

REMONSTRATORS - 2009-VAR-65 – Eldon: None

ADDITIONAL QUESTIONS FOR STAFF – 2009-VAR-65 – Eldon: None

FURTHER QUESTIONS FOR STAFF - 2009-VAR-65 – Eldon

Guerrettaz: **In the matter of case number 2009-VAR-65, this is a design standards variance Chapter 825 of the ECO Environmental Constraints Overlay Zone Area 2 (15% slope), the address being 7212 East Pine Grove Road, I move that we approve the variance based on the staff report, findings of fact and the condition that;**

- 1) The submission and approval of a grading permit and erosion control plan to be reviewed by the Monroe County Planning Dept. and Highway Dept.'s MS4 Operator.**

Sorensen: **Second.**

Kaczmarczyk: Ok, call the roll for us Larry.

Wilson: Ok, the vote is on petition 2009-VAR-65, the Eldon variance from the Environmental Constraints Overlay 15 percent slope requirement. The motion is approve the variance subject to the submission and approval of a grading permit and an erosion control plan to be reviewed by the Monroe County Planning Dept. and Highway Dept.'s MS4 Operator. Again, a vote in favor is a vote to approve the variance. Vicky Sorensen?

Sorensen: Yes.

DRAFT

Wilson: Margaret Clements?

Clements: Yes.

Wilson: Bernie Guerrettaz?

Guerrettaz: Yes.

Wilson: William Hosea?

Hosea: Yes.

Wilson: Mary Beth Kaczmarczyk?

Kaczmarczyk: Yes.

Wilson: The variance is approved 5 to 0.

The motion in case 2009-VAR-65, Eldon Environmental Constraints Overlay Area 2 (15% Slope) Ch.825, in favor of approving the requests with conditions as set forth in the motion, carried unanimously (5-0).

DRAFT

NEW BUSINESS

- 15. 2009-VAR-66** **Baker DADU Condition No. 55 (Shared Driveway) Variance, Ch. 802**
16. 2009-VAR-67 **Baker DADU Condition No. 55 (Residential Space) Variance, Ch. 802**
Three (3) 8.93 +/- acre parcel in Bean Blossom Township, Sections 22 & 27
at 8000 N Mt. Tabor RD. **Zoned AG/RR.**

BOARD ACTION: Kaczmarczyk introduced the petition.

STAFF ACTION:

Crecelius: Thank you Mary Beth. You guys are killing it tonight. What an agenda. Our petitioner is Mary Baker, in care of Stephanie and Jeff Baker. So, this is 2 design standards variances; both from the Detached Accessory Dwelling Unit definition and condition, that is Condition Number 55. The property is located in Bean Blossom Township at 8000 North Mt. Tabor Road. It is currently zoned Agricultural/Rural Reserve and the Comp Plan does designate this as Rural Residential. The first variance request is that the DADU, the acronym, DADU, must share a driveway with a principal dwelling unit. The petitioners are requesting this because their primary residence, access to their primary residence is an access easement. So, in order to expand the driveway to meet this criteria they would have to request an extension of the easement from the southern neighbors and they are not confident with having to request that. It could go either way. The proposed driveway before we kind of got into this with the petitioners in getting variances they had already submitted a driveway permit application and they did get it. So, it is a safe driveway. If this first variance is approved then we do know that it is a safe access point and I did go over this with my Director, Larry, he was in support of this variance request as well. The second one, also from Condition Number 55 is that a Detached Accessory Dwelling Unit is limited to 1,000 square feet of residential space. This is an update, the report does state that they were requesting 1,600 square feet. They were hoping to purchase a used mobile home. It would have been a double mobile home and they were hoping to renovate that and turn part of that into a detached garage. I spoke with them just the other day and they found a different mobile home, so now their new request is much less than the original request. They are now requesting approximately 1,300 square feet, so 300 square feet or more than the current limitation. The petitioners did purchase this property with the belief that it was a legal lot of record. The parcel that we are kind of discussing right now is 1.83 acres but as yesterday or today it has been legally combined with the rest of the families adjoining properties so that it is legal and then the only way they would have a second residence is if they did the Detached Accessory Dwelling Unit. The petitioner, Mary Baker, she has been trying to relocate down here from Indianapolis and she is currently living with the petitioner's Stephanie and Jeff at the property in their home. They have been trying to figure out a way and they thought they had deal with getting this adjoin property but with legal issues it turned out it took a few extra steps. They have been fantastic working with us. They have now combined their property. We are happy to support them during these DADU request but this is the only route towards getting that second residence because their total property acreage is still under the amount that they would need to be able to subdivide. Again, they are currently zoned Agricultural/Rural Reserve. Comprehensive Plan identifies them as Rural Residential. The site, not too much slope. There is not very many environmental concerns. They do have an approved septic permit for the proposed location of the DADU. The image on the left this is the parcel that we are discussing. It is 1.83 acres and this would be the location of the DADU. The residence on the bottom right that is the primary residence. The photo on the bottom right that

DRAFT

highlights the full 3 parcels and now one legal lot of record owned by the Bakers. A few photos. This area is pretty wooded with trees so it is kind of difficult to get a good photo. The aerial imagery, the pictometry was a little better because you can see that is not quite as grown up. It is a little bit thinner. This is their new updated site plan. It is different from the report. This shows the new location of mobile home which is now 27' by 48', the approved septic location and at least by Monroe County Highway approved driveway permit location and that is one of the variances that we are looking at, whether or not they could they could have a separate driveway entrance. Staff is recommending to approve both the design standard variances from Condition #55 from the Shared Driveway and from the 1,000 square feet Residential Space limitation for the DADA requirements. The following condition I did have in the report but as yesterday, they have met this condition so I don't know if we need to include that or not. I guess that is up to you guys. But the condition at the time of the report was that they would combine this tax parcel with their adjoining legal lot of record property. I have got the email with their record deeds just yesterday. Does anybody have any questions?

RECOMMENDED MOTION:

Approve both design standard variances from Condition #55 (Shared Driveway and Residential Space) DADU requirements of Chapter 802 of the Monroe County Zoning Ordinance based on the findings of fact, with the following conditions:

1. Combine tax parcel (53-03-27-200-005.000-001) with the adjoining legal property (tax parcels: 53-03-22-300-015.000-001, 53-03-27-200-007.000-001) for Planning and Zoning Purposes per Chapter 804.

FINDINGS OF FACT: DADU Cond 55 Shared Driveway

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 shared driveway variance would allow the petitioner to use a driveway that independent of the primary Single Family Structure for the DADU;
- The petitioner site currently contains a 1,680 sf home built in 1994;
- There are no designated scenic areas adjacent to the petition site;
- There is no evidence that a separate driveway entrance for the proposed DADU 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:

DRAFT

- See findings under A (1);
- The location of the proposed DADU has road frontage along N Mt. Tabor Rd, a designated local road;
- The petitioners applied for driveway permit in August before pursuing this variance;
- The Highway Dept. issued the driveway permit for the proposed DADU;
- Conclusion: It would **not** interfere with or make more dangerous, difficult, or costly, the use, installation, or maintenance of existing or planned transportation and utility facilities.

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

Findings:

- See findings under A(1) and A(2);
- Except for the second variance from Residential Space, the DADU would meet all other Chapter 802 design standards;
- This includes recording an affidavit stating that the property owner will live in one of the dwellings on the property with Monroe County Recorder's Office;
- 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;
- The location of the proposed DADU and driveway is within slopes less than 15%;
- 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 proposed DADU and driveway is not expected to negatively impact current conditions;
- Conclusion: It **would not** promote conditions detrimental to the use and enjoyment of other properties;

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

Findings:

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

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

Findings:

- The petition site's primary Single Family Residence is access through an easement;
- Expansion of the easement to include access to the proposed DADU location would have to be granted by the southern neighbor;
- The petitioner's representatives lack confidence that an easement expansion would be granted;
- 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.

FINDINGS OF FACT: DADU Cond 55 Residential Space

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 Residential Space variance would allow the petitioner to permit a DADU structure that exceeds the 1,000 sf restriction;
- The petitioner is requesting to place a used manufactured home on the property that, after renovation, would contain 1,650 sf of residential space;
- There are no designated scenic areas adjacent to the petition site;
- There is no evidence that a DADU that exceeds 1,000 sf 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 location of the proposed DADU has frontage along N Mt. Tabor Rd., a designated local road;
- The proposed placement of manufactured home 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 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);
- Except for the shared driveway variance, the proposed DADU would meet all other Chapter 802 design standards;
- Conclusion: The character of the property included in the variance would **not be altered**

DRAFT

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 proposed DADU and driveway is not expected to negatively impact current conditions;
- Conclusion: It **would not** promote conditions detrimental to the use and enjoyment of other properties;

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

Findings:

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

DRAFT

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

Findings:

- The petitioner states in Exhibit 1 that financial difficulties that have limited their ability to relocate to the county in the past;
- They also state that they're now in a more urgent situation due to deteriorating health;
- The petitioner purchased an adjoining 1.83 acres to their family under the assumption that it was a buildable lot;
- Planning and Zoning determined that this parcel is a tax parcel and isn't a separate lot of record;
- In order to build/place a second residence on the property (after combing for Planning and Zoning purposes) a DADU permit must be pursued;
- The petitioner states in Exhibit 1 that purchasing a used manufactured home would be the only [financial] way to "*own a home* [with their] *budget*";
- 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 – 2009-VAR-66 & 2009-VAR-67 - Baker

Kaczmarczyk: Any questions for staff: Seeing none. Are the petitioners here and would they like to speak?

PETITIONER/PETITIONER'S REPRESENTATIVE – 2009-VAR-66 & 2009-VAR-67 – Baker

Crecelius: I believe they are but I believe they were happy address questions if anybody had them.

Baker: We are here and if you have questions yes we are happy to answer them.

Kaczmarczyk: Ok, thank you very much. Is there anybody here that would like to speak on behalf of the petition? Anyone here who wishes to speak against this petition?

REMONSTRATORS - 2009-VAR-66 & 2009-VAR-67 - Baker

Kerr: I have a question.

DRAFT

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

Kerr: I do.

Kaczmarczyk: Please state your name?

Kerr: Jason Kerr: I live directly north of this residence of the property. I just have concern. The only concern I have I think is property value is what is going to happen. We just built at 8020 North Mt. Tabor and we put our whole life into it. I don't know what a mobile home per say would do with residential pricing in the area. I don't know if it would hurt us or not. Hopefully it wouldn't it wouldn't and they can go ahead with their plans with no problems. I don't wish anything on anybody bad I am just concerned of that nature I just wanted that stated.

Kaczmarczyk: Thank you sir.

SUPPORTERS – 2009-VAR-66 & 2009-VAR-67 – Baker: None

FURTHER SUPPORTERS – 2009-VAR-66 & 2009-VAR-67 – Baker: None

ADDITIONAL QUESTIONS FOR STAFF –2009-VAR-66 & 2009-VAR-67 – Baker: None

FURTHER QUESTIONS FOR STAFF – 2009-VAR-66 & 2009-VAR-67 – Baker

Hosea: I would be glad to. **In case number 2009-VAR-66 and 2009-VAR-67, request is for design standards variance, Chapter 802 Condition #55 Shared Driveway and design standard variance Chapter 802 Condition #55 Residential Space, I move that we approve both variances based on the findings of fact, the recommendation and conditions set forth by the staff.**

Kaczmarczyk: I **second** that. Larry will you please call the roll?

Wilson: Yes. The vote is on petition number 2009-VAR-66 and 2009-67, the Baker design standards variance from the conditions in regards to the Detached Accessory Dwelling Unit. The motion is to approve both design standard variances from Condition #55, shared driveway and residential space based upon the findings of fact noting that the condition set forth in the staff report has been met based upon the presentation by Anne tonight. Again a yes motion is a motion is a motion to approve. Margaret Clements?

Clements: Yes.

Wilson: Bernie Guerrettaz?

Guerrettaz?

Guerrettaz: Yes.

DRAFT

Wilson: William Hosea?

Hosea: Yes.

Wilson: Mary Beth Kaczmarczyk?

Kaczmarczyk: Yes.

Wilson: Vicky Sorensen?

Sorensen: Yes.

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

The motion in cases 2009-VAR-66, Baker DADU Condition No. 55 (Shared Driveway) Variance, Ch. 802, and 2009-VAR-67, Baker DADU Condition No. 55 (Residential Space) Variance, Ch. 802, in favor of approving the requests with conditions as set forth in the motion, carried unanimously (5-0).

DRAFT

NEW BUSINESS

- 17. 2009-CDU-05 Fields Conditional Use for Historic Adaptive Reuse from Chapter 813**
One (1) approximate 0.2 +/- acre parcel in Perry Township, Section 34 at 6189 S Fairfax RD. **Zoned SR/ECO3/HP Overlay.**

BOARD ACTION: Kaczmarczyk introduced the petition.

STAFF ACTION:

Behrman: This is request for a Historic Adaptive Reuse from Chapter 813. This is an approximately 0.2 acre parcel in Perry Township, Section 34 at 6189 South Fairfax Road. It has 3 zones. It is zoned SR. It is in the ECO Overlay Area 3 and was recently rezoned to add the HP Overlay to it. A little background here is the petitioner applied for a permit in 2019 to convert an old vacant commercial building into a residence, because a residence is a permitted use in the SR zone by definition that means they could turn that into a commercial rental but it has to be with 30 days or more occupancy, not a short-term rental that is not permitted in this zone. They basically did an interior remodel of this which did not trigger any design standards variances at the time. Then they applied to rezone to add the HP Overlay to the property which activated the Historic Adaptive Reuse Conditional Use tool and this will then let them make this proposal to do a tourist home or short-term rental with the property. There are staff concerns with site limitations basically parking and traffic concerns, septic system capacity and building code I will just throw out there that the petitioner also has a concurrent petition to do a lot line shift through a Type E Administrative Subdivision. They just finished a quiet title process but they are requesting a right of way width waiver. This was per the Historic Preservation Board of Review request so that it would protect some of the history of the historic items on the property. Again, this is located at the intersection of Fairfax and East Sanders Second, kind of in the old town plat of Sanders and we went over the zoning already. It is one of the designated communities but really falls within a rural residential type of zoning when you look at the more specific type of map. This is the approximate parcel line. Like I said they are in the process of redefining and coming up with a legal description, in fact that was a condition of their rezone and that will be a condition of this rezone as well that they finish that process and have a solid recorded legal description when they are done. It is a pretty, tight, small lot. It is 0.22 acres. It previously did not have a septic system on it but they did add a Fin 3 bed Presby system to the site, actually it was technically offsite which was the impetus for this whole lot line shift so that the septic would be on the same lot as the old Hays Grocery Store. There are still working through that process of the legal description. You can see the septic system kind of walled off by some limestone block to protect people from driving over it. Along the northern property line is a gravel drive and that is actually is an access point to the neighbor to the north. I think they are trying to work out an easement agreement but that has not successful yet. Just kind of taking note some of the other properties in the vicinity of this property so a tourist home usually has a stipulation that the tourist home be 200 feet away from all primary residences and that is not the case here. Although the petitioners do own the lot currently that is just directly east. The bottom picture there, I just wanted to give, part of the reason they wanted this tourist home use to become available is Whippoorwill Farms here where this star is, family members have been acquiring and shifting lot lines up there was well, doing quiet titles with the old rail lines that are in there and I think they are intending to do a direct path from Whippoorwill to this site for guest to be able to use to be able to walk back and forth to. So, it is just sort of an offset and kind of is affiliated with Whippoorwill Hills and it's advertised on their website. These are some of the

site photos. They really don't do justice to some of the work that has been put into this property. They have taken old gas pumps and old gas tanks out. They are restoring the gas pumps that are going to be relocated here. The interior is just gorgeous really and there are some complications though. It is a tiny site. In the bottom picture you see we worked with their engineer and we were able to put 4 parking spaces per our definition of Chapter 806 Parking Standards, on the east side of the lot. There will be one other parking space on the west side and the septic system is there along with all of the utilities right up next to the building and you will see it in a moment. This is the northern property line and again they share this driveway access with the neighbor to the north that does not have an easement quite yet. They are working through that. Then we have got the intersection here at East Sanders Second and Fairfax, we heard a lot from the public about this because when then the site was purchased originally it changed traffic patterns because it was suddenly was privately owned. The owners didn't want people driving through their property so they worked with the Highway Department to change some traffic patterns, did some upgrades to this intersection, and added some stop sign features. It is a little more safe but there is a blind curve, a blind hill down here. It is not the best intersection. It has some issues I have heard with buses as well. This is the site plan that was worked out with the petitioner's engineer. I just highlighted a few things; the septic system in yellow, the old Hays Grocery Store in green there that has been remodeled. I didn't include the porches but there is porches off of each side and you can see the 5 parking spaces that we were able to come up with on the site here. One thing, there will be a discussion about the Presby system. It is a FIN system, which is special and built for a very restricted lots and it's tiny. Its capacity is for two bedrooms which is basically is about 4 people and we will also talk about residential code here in a moment. The petitioner's letter; initially they were requesting a tourist home and they are stating there are 2 bedroom/2 bath within this, they were also saying that they could get 8 parking spaces on here but by Chapter 806 standards we were only able to fit 5 on here. Additionally just part of the building permit was just was on that previous slide demonstrating the bedrooms that they had added and the building permit on the left here specifically allowing us to release it because a residence is permitted in this SR zone but not a short-term rental. Now that they have this HP Overlay they were able to ask for this tourist home use through the Historic Adaptive Reuse tool and then the septic permit. I spoke with the Health Department on 2 different occasions. One was just a few days again. I wanted to really confirm things. They pulled the file for me and we went over this septic permit. Basically it is for 2 bedrooms and there is a thing that says Presby FIN 2 beds. I clarified that 3 beds actually means, oh am I going to forget it, the fields that oh I forgot the word, absorption fields, sorry, is basically what that means because I didn't want there to be confusion with this permit here. We reviewed state code that states that since this is sized for 2 bedrooms it can accommodate 300 gallons of sewage per day and that is something that is a site limitation basically. We also reviewed and did a tourist home analysis. Normally tourist homes are on lots that are on 2.5 acres in size or larger. This is a 0.224 acre lot. The septic system always has to match the number of bedrooms and we measured some of the distances from some of the adjacent homes none of which were more than 200 feet they are all much closer, some as close as 35 feet with that norther home and in the other thing that we kind of got into was parking. We don't have a maximum parking limitation. We do have a minimum parking standard and the tourist home very distinctly says there is no parking allowed on the street or road for guests. So, we want to try to pull out what is matching what is not matching and then look at this Adaptive Reuse that we are trying to do. Staff came across and looked at the Whippoorwill Hills website and did find a link to the Hays Grocery Store/Sanders Store as they were refereeing to it as and here we have another conflict with they are advertising

DRAFT

6 parking spaces, again we are only seeing 5. They were advertising seating for 21 people. We also had a testimony where they had 40 guests and after talking with the Health Department we really think that that is just too much for this site. You have to understand that there are residences completely surrounding this site with a tricky traffic pattern already in place and so staff is really taking a lot of these things into consideration. The fact that this is built to residential code and not commercial code and they are not going to be required to build to commercial code because they are probably are not coming back for any building permits anytime soon, they have done they work already, they have a Certificate of Occupancy that was issued in 2019 and so without having sprinkler systems and exit signs and things like that that are more affiliated with commercial type structures and buildings it does seem a little much to see 21 to 40 people at this property. I did get a remonstrance letter and this was actually distributed this morning. It came in yesterday. This person was very thoughtful with their comments. They have been following this petition site for about a year with both the rezone and seen all the work that was been done on the site and the construction disruption that was causing for the neighborhood at the time. I also received a phone call from another person with concerns of the intensity of the site and then I also have another phone call from someone with questions and they were concerns that some of the people that lived on that road would not have access to this meeting and be able to speak their voice. I tried to communicate ways best we could how to attend if need be. Staff recommend for petition 2009-CDU-05, we put a lot of thought into this, we think this is a pretty good fit so we are recommending approval of the Conditional Use request of the Historic Adaptive Reuse based on the findings of fact with the following 7 conditions;

- 1) The petitioner must provide a recorded legal description by completing the Type E Subdivision process and recording the plat prior to changing the use of the property as a Tourist Home.
- 2) Parking of visitors to the Tourist Home must park on site according to the approved site plan. No street parking is allowed.
- 3) Only four (4) overnight guests permitted on site with no more than six additional daytime visitors permitted.
- 4) Occupancy limits must be posted.
- 5) Update the Commercial Sanders Store website to reflect the allowed number of guests.
- 6) Submit monthly to Planning Staff the Southern Monroe Water District daily water usage reports for the first year of operation to monitor the amount of water being put into the septic system;
- 7) May not be used as an event center as defined by Chapter 801:

***Event Center,** A building (which may include on-site kitchen/catering facilities) where indoor and outdoor activities such as weddings, receptions, banquets, corporate events and other such gatherings are held by appointment.*

We are really trying to reign this in and keep this as a tourist home use so as not to disturb the residential neighborhood around it and also not overly tax the parking, the septic, we are working with a residential building code here. I am happy to take questions.

RECOMMENDATION

Approve the conditional use request for Historic Adaptive Reuse based on the findings of fact with the following seven (7) conditions:

1. The petitioner must provide a recorded legal description by completing the Type E

DRAFT

Subdivision process and recording the plat prior to changing the use of the property as a Tourist Home.

2. Parking of visitors to the Tourist Home must park on site according to the approved site plan. No street parking is allowed.
3. Only four (4) overnight guests permitted on site with no more than six additional daytime visitors permitted.
4. Occupancy limits must be posted.
5. Update the Commercial Sanders Store website to reflect the allowed number of guests.
6. Submit monthly to Planning Staff the Southern Monroe Water District daily water usage reports for the first year of operation to monitor the amount of water being put into the septic system;
7. May not be used as an event center as defined by Chapter 801:

***Event Center,** A building (which may include on-site kitchen/catering facilities) where indoor and outdoor activities such as weddings, receptions, banquets, corporate events and other such gatherings are held by appointment.*

FINDINGS OF FACT: Conditional Use, Chapter 813

In order to approve a conditional use, the Board must have findings pursuant to Chapter 813-5 Standards for Approval. The Board must find that:

- (A) **The requested conditional use is one of the conditional uses listed in Chapter 813-8 (for the traditional County planning jurisdiction) or Table 33-3 (for the former Fringe) for the zoning district in which the subject property is located. In addition to the other relevant standards imposed by or pursuant to this chapter, the standards, uses and conditions set forth in Section 813-8 are hereby incorporated as standards, uses and conditions of this chapter;**

Findings:

- The proposed use is listed as “Historic Adaptive Reuse” in the Use Table in Chapter 802 of the Monroe County Zoning Ordinance;
- Two conditions are attached to the proposed use in Chapter 802, Conditions 15 and 44;
- Condition 15 reads, “*The Plan Commission may attach additional conditions to its approval in order to prevent injurious or obnoxious dust, fumes, gases, noises, odors, refuse matter, smoke, vibrations, water-carried waste or other objectionable conditions and to protect and preserve the character of the surrounding neighborhood,*” in this case it would be the Board of Zoning Appeals;
- Condition 44 reads, “*Subject to the procedure described in Chapter 813 of the Monroe County Zoning Ordinance.*”;
- The petition property is zoned Suburban Residential (SR) and is in the Environmental Constraints Overlay Area 3 (ECO3) for the Lake Monroe watershed;
- The property was rezoned to add the HP Overlay in 2020;

- (B) **All conditions, regulations and development standards required in the Zoning Ordinance shall be satisfied;**

Findings:

- The petitioner is requesting approval to be able to use the existing Sanders Store as a

DRAFT

short term rental / tourist home use;

- The vacant commercial store from 1913 was converted into a two bedroom residence under Improvement Location Permit 19-R1-130 with it to be specifically used as a residence;
- Further development on the site is required to meet Height, Bulk, Area, and Density requirements for the (SR) Zoning District, in addition to other ordinance specifications;
- The Monroe County Historic Preservation Board of Review must review all external changes to the site under the Certificate of Appropriate process;
- The existing structure is within the setbacks of the property and would require variances for further expansion;
- The site is 0.224 acres in size and has limited ability to further expand;

(C) Granting the conditional use shall not conflict with the general purposes of the Zoning Ordinance or with the goals and objectives the Comprehensive Plan;

Findings:

- The zoning ordinance allows for Historic Adaptive Reuse as a conditional use in the (SR) zone;
- The Comprehensive Plan designates the site as Designated Communities: Smithville-Sanders Rural Community Area;
- The description of the Comprehensive Plan's Designated Communities: Smithville-Sanders Rural Community Area designation is provided in this report;
- The Suburban Residential (SR) Zoning District has a 1.0 acre minimum lot size requirement;
- The petition site is approximately 0.224 acres;
- The petitioner has restored a previously run-down, vacant commercial building into a functioning residence;

(D) The conditional use property can be served with adequate utilities, access streets, drainage and other necessary facilities;

Findings:

- The petitioner did not provide any findings of fact for this petition;
- The conditional use property for a two bedroom Tourist Home can be served with adequate facilities;
- Septic permit #21956 issued 5/21/2019 for 2 bedrooms (four people);
- The petitioner has stated in their letter the site has two bedrooms;
- The Presby EnviroFin septic system installed is allowed for homes with limited acreage, the site has approximately 0.224 acres;
- Staff had a conversation with the Health Department on 9/28/2020 and this system under Indiana Code 410 IAC 6-8.3-12 can accommodate 300 gallons of sewage per day;
- The petitioner did not submit the link to the [website](#) for the Sanders Store and was found by staff;
- There are staff concerns that the website advertising of the number of beds (1 King, 1 Queen, 1 Queen pull out and 1 Twin pullout) and seating for 21 people will exceed the

DRAFT

- septic system daily capacity;
- The website also mentions the dishwasher, laundry machine, kitchen and two bathrooms which must direct all grey water into the septic system;

(E) The conditional use shall not involve any element or cause any condition that may be dangerous, injurious or noxious to any other property or persons, and shall comply with performance standards delineated in this ordinance;

Findings:

- The petitioners will be required to comply with the Performance Standards set forth in Chapter 802-4 of the Monroe County Zoning Ordinance;
- The petition site can accommodate five (5) parking spaces based upon engineered drawings;
- The petitioner has stated in their letter this will accommodate two bedrooms;

(F) The conditional use shall be situated, oriented and landscaped (including buffering) to produce a harmonious relationship of buildings and grounds with adjacent structures, property and uses;

Findings:

- The proposed Tourist Home will be located approximately 35' from the adjacent northern home, 115' from the adjacent eastern home, 130' from the southern home and 189' from the western home;
- The petitioner owns the property directly east;
- The petitioners have restored a rundown, vacant commercial building gaining the 2020 award from Bloomington Restorations, Inc for Outstanding Preservation Project;
- There is no proposed landscaping;
- Most of the site is gravel;
- The lot is approximately 0.224 acres and there is just room on the site for the appropriate utilities and parking;
- A site plan is required for the Tourist Home that will undergo review by the Monroe County Historic Preservation Board of Review;
- The previous rezone to HP Overlay petition garnered a lot of attention from the neighbors due to changes in traffic patterns;

(G) The conditional use shall produce a total visual impression and environment which is consistent with the environment of the neighborhood;

Findings:

- See Findings (F);
- The petition site has frontage on two roadways, E Sanders Second Ave, a local road and S Fairfax Road, a major collector;
- The site was formerly the Hays Market / Sanders Store that provided services to the surrounding neighborhood;
- The store sat vacant for several decades;

DRAFT

- The old gas pumps are currently under restoration and will be restored to the site;
- The petitioner has two driveway permits to access the site from each road;

(H) The conditional use shall organize vehicular access and parking to minimize traffic congestion in the neighborhood; and,

Findings:

- When the petitioners purchased the property they prevented residents from using the private property for an alternate traffic route to bypass the intersection of S Fairfax Rd and E Sanders Second Ave;
- The Highway Department has made several improvements to the intersections including additional asphalt and additional stop sign in response to complaints;
- The petition site has frontage on two roadways, E Sanders Second Ave, a local road and S Fairfax Road, a major collector;
- The petitioner has two driveway permits to access the site from each road;
- The driveway off of S Fairfax Road is shared by the residence to the north;
- According to the petitioner's site plan the S Fairfax RD driveway will access one parking space for the Tourist Home and the driveway off of E Sanders second Ave will accommodate 4 parking spaces with guests required to back out onto the local road;

(I) All permits required by other Federal, State and local agencies have been obtained;

Findings:

- Further development on the site is required to meet Height, Bulk, Area, and Density requirements for the (SR) Zoning District, in addition to other ordinance specifications;

All conditional uses are subject to the criteria established in Section 813-5. Additional criteria as specified in this section must be met by the following categories of conditional use.

Historic Adaptive Reuse:

(1) Property shall have been designated or have filed a petition for Historic designation at the time of the application for a conditional use permit;

Findings:

- The Monroe County Commissioners approved local historic designation for the petition site on March 11, 2020 (Ordinance No. 2020-09);
- There was one condition of approval associated with the rezone: *1) Submit an accurate, recorded legal description with proposed right of way requirement waiver;*
- The condition has technically been met by the submittal of the Fields – Sanders Type E Subdivision with Right of Way Width waiver request;
- The petition will be heard by the Plan Commission on November 17, 2020;

(2) Proposed use shall not diminish the historic character of the property or, if it is located within an historic district, the historic character of said district;

DRAFT

Findings:

- Historic Adaptive Reuse approval per the petitioner's submitted request will not diminish the historic character of the property if following the staff conditions of approval;

(3) Proposed use shall enhance the ability to restore and/or preserve the property;

Findings:

- The proposed use will enhance the ability to preserve the property and reuse its designated historic structures on site;

(4) The granting of the conditional use permit shall be contingent upon any required Certificate of Appropriateness and upon the granting of Historic designation;

Findings:

- Historic designation has been granted for the petition site, meaning all external changes to the buildings will require Certificate of Appropriateness.

QUESTIONS FOR STAFF – 2009-CDU-05 - Fields

Kaczmarczyk: Does the Board have any questions for Tammy?

Sorensen: I was just going to ask you Tammy you were mentioning permits. Have they gotten all the permits or are there other permits that they still need to get?

Behrman: They will still need to file for a Tourist Home Permit which includes a site plan basically and they also because it is zoned with Historic Preservation Overlay they will need to submit a Certificate of Appropriateness application to the HP Board just basically what we will be doing is just confirming the site plan, the parking, the landscaping, if any is required and just making sure it still fits with the historic character of the area.

Sorensen: So, would they need our approval tonight to be able to move forward on those permits?

Behrman: Yes because of that use, this is a very specific request to have use that is not normally permitted in this zone.

Kaczmarczyk: Bernie, you had a question.

Guerrettaz: I will just wait until after the petitioners present.

Kaczmarczyk: Does anyone else have any questions for Tammy? Are the petitioners here?

PETITIONER/PETITIONER'S REPRESENTATIVE – 2009-CDU-05 – Fields

Nester Jelen: I see L. Fields 1, if you would like to speak feel free to unmute.

DRAFT

Kaczmarczyk: Did you want to speak Mrs. Fields?

Nester Jelen: May we can come back to her.

Kaczmarczyk: Ok.

Fields: Here I am. I am present. This is Kay Fields.

Kaczmarczyk: I assume you wish to speak.

Fields: I do.

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

Fields: I do.

Kaczmarczyk: State your name, please.

Fields: Kay Fields.

Kaczmarczyk: Ok, go ahead, Ms. Fields.

Fields: You guys have done a great job in this meeting, number one and I think we are the last ones, so here we go. I am happy to report that we are really moving along with the Type E Subdivision as Tammy said. I think she and Jay Floyd from Bynum Fanyo are coming together on a legal description and then we should be able to get it official. I don't know exactly what that process is but we will get that done. We would like to request and increase for the number of overnight guests to 7 people. I understand that the septic is the concern. We had no indication that the number of guests would be limited until we got this report for the zoning committee. Randy Raines, the Monroe County Sanitarian, is the gentleman that approved the septic and was actually on site when it was put in and we have spoken with him as kind of a counterpoint as to what Tammy has said tonight and he believes that it is set up for a 3 bedroom/2 bath scenario. Unfortunately, Randy is on vacation until tomorrow but he said he would be happy to write a letter to the Zoning Board to explain his views on that. The usage of the Sanders Store will really be primarily on the weekends, which we believe will reduce the amount of waste into the septic system by half. This will not be a facility that will be used 7 days a week by any means. We are happy to do the water usage study but we believe it will support the view of having maximum number of guests at the store of 7. Our second request tonight is concerning parking. We have been allowed 5 parking places. We would like to be considered for the possibility of 6 parking places. The east side of the property is the problem. It is the west side of the property. That area, we have done some changes that the Highway Department requested, that included eliminating the driveway that went onto Sanders Second and also removing blacktop that was along Fairfax. We put in dirt and grass. But there is still a large gravel area there that has always been this store's parking lot. I am thinking that perhaps we could do linear parking, Tammy has explained to me that you can't put them because some of that parking lot is not on our deeded property but it is there and I am hoping that we can use it. If we can't use side by side, north/south parking I am

DRAFT

wondering if we can do linear where one is in front of the other. Lastly, I want to address briefly and I will be happy to answer any questions the Planning Department's concerns, we will certainly will update the website. You need to understand that we have been paying a big mortgage on this property for over a year now and I know that is not your concern but it is certainly is our family concern not being able to bring our business plan to fusion. So, the advertising on the Whippoorwill Hill website was merely to stimulate interest and that will of course be updated when we know what the guidelines are. Lastly, we do believe that this does fall into the Monroe County Comprehensive Plan. The Sanders Store is not in that direct plan for the Smithville and strain ridge area but it certainly is close. It is a renewed historic building which we believe is the anchor to the Sanders community and will bring new people and their money to the Bloomington area. Let me know if you have any questions.

Kaczmarczyk: Do any of the Board members have questions for the petitioner?

Nester Jelen: I would like to quickly address, Tammy I am sure you covered this too, but the parking request would be dealt with at the site plan stage and it is more of a zoning concern, outside of the conditional use.

Behrman: Yes and the way that we worded that condition that the parking of visitors has to just meet that approved parking plan. So, we could probably work with that design to see if something works.

Fields: Thank you.

Guerrettaz: So, with the 7 visitors, again the bigger concern there is because of the presby and 7 overnight visitors is too much it is just going to cause the presby to fail and then that is going to be a detriment to the land owner so I would suggest that if they have got professional expertise that through the Health Department or otherwise that says that system will handle it, I personally don't have a problem with 7 overnight visitors.

Clements: I don't either, Bernie. This is Margaret. I feel that that they have done their homework. They have sought the expertise. They have a valid business plan and actually the business plan demands this level of accommodating guests and it does make use and reuse of historic structures. So I feel, I was out there today just looking at the driving and the parking, I feel as though it is a very viable project. As far as the Highway Department is concerned there, it is very similar to all aspects if the road because that is just topography of Monroe County in the Sanders area so I feel as though certainly the level of car activity would not exceed what took place when it was a commercial business. Anyway, those are my initial thoughts on that.

Guerrettaz: Mrs. Fields, are there outside bids on the structure?

Fields: It's not on the structure. But there is that little garden area that actually covers the water meter and septic on the east side of the building and there is a hose, yeah, there is a hose bid right there.

Guerrettaz: You might, because that water won't go into your presby so you might want to be

DRAFT

aware that if you are using that a lot the limits you discussed with the Health Department start to meter that or something. Just a suggestion.

Fields: Good point.

Kaczmarczyk: Any other questions from the Board for the petitioner? I don't see any. Thank you. Is there anyone here who wishes to speak on behalf of this petition?

SUPPORTERS – 2009-CDU-05 – Fields

Bachant-Bell: I would like to speak.

Kaczmarczyk: On behalf of the petition?

Bachant-Bell: On behalf of the petition.

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

Bachant-Bell: Yes.

Kaczmarczyk: Alright. Please state your name.

Bachant-Bell: Danielle Bachant-Bell and I am Chair of the Monroe County Historic Preservation Board of Review so I am just wanting to on behalf of the Board add our support of the project. Obviously the Fields's have put a tremendous amount of work into this and they are willing to do whatever they need to do to make it happen. We just wanted to give our continued support from the Board for this project to move forward. Honestly, what else would happen with this little building if they weren't doing something like this? Any reuse is going to have issues, positive, negative. It is a wonderful thing to see it being reused in some way. Thank you.

Kaczmarczyk: Thank you Danielle. You have a good evening.

Bachant-Bell: You too.

Kaczmarczyk: Anyone else here wish to speak on behalf of this petition?

Nester Jelen: I am not seeing anyone.

Kaczmarczyk: Anyone here wish to speak against this petition? Anyone? Not seeing anyone. I would entertain a motion please.

FURTHER SUPPORTERS – 2009-CDU-05 – Fields: None

REMONSTRATORS - 2009-CDU-05 – Fields: None

ADDITIONAL QUESTIONS FOR STAFF – 2009-CDU-05 – Fields: None

FURTHER QUESTIONS FOR STAFF – 2009-CDU-05 – Fields

Guerrettaz: I can do this. In case number 2009-CDU-05, this is the Fields Conditional Use at 6189 South Fairfax Road, the request is a Conditional Use of a Historic Adaptive Reuse, I move that we approve the petition based on the findings of fact in the staff report, the recommendations found therein and with the following conditions;

- 1) The petitioner must provide a recorded legal description by completing the Type E Subdivision process and recording the plat prior to changing the use of the property as a Tourist Home.**
- 2) Parking of visitors to the Tourist Home must park on site according to the approved site plan. No street parking is allowed.**

Which I don't think restricts them from doing what they want to do with the additional spaces.

- 3) Only 7 overnight guests permitted on site with no more than six additional daytime visitors permitted.**

Guerrettaz: I am going to back up here. Is that saying that there are only 4 overnight guests, with a total of 10, daytime included? Is that correct?

Behrman: Yes.

- 4) Occupancy limits must be posted.**
- 5) Update the Commercial Sanders Store website to reflect the allowed number of guests.**
- 6) Submit monthly to Planning Staff the Southern Monroe Water District daily water usage reports for the first year of operation to monitor the amount of water being put into the septic system;**
- 7) May not be used as an event center as defined by Chapter 801:**
Event Center, A building (which may include on-site kitchen/catering facilities) where indoor and outdoor activities such as weddings, receptions, banquets, corporate events and other such gatherings are held by appointment.

I will add a condition that;

- 8) The petitioner receive a letter from Randy Raines stating that the presby as permitted will satisfy their needs on the property.**

Clements: I **second** the motion.

Kaczmarczyk: Larry, will you please call the roll?

Wilson: Yes. The motion is on petition 2009-CDU-05, Fields Conditional Use variance for a Historic Adaptive Reuse as provided by Chapter 813. The motion is to approve based upon the conditions submitted with the following additions or amendments that under Condition 3 instead of 4 overnight guests, 7 overnight guest be permitted with no more than 6 additional daytime visitors and with the addition of a new Condition 8, that a letter be submitted from Randy Raines, County Sanitarian approving the occupancy that is set forth by the variance approval. Again a yes vote is a vote to approve the conditional use with the conditions set forth in the motion.

DRAFT

Clements: I just have a question, Larry and Bernie. Did you not Bernie say that there should be allowed 7 additional daytime visitors?

Guerrettaz: No, I left it at 6. I didn't hear the petitioner state that they wanted to change that so I left it the way that it was. If I missed something I can readdress that but I didn't hear anything different.

Fields: We would certainly take 7 but we are happy with 6 as long as I mean we are thrilled with the 7 overnight guests.

Clements: I am just thinking **I would move that to 7 additional daytime guests but that would be a friendly amendment.**

Guerrettaz: **I accept that friendly amendment.**

Clements: Thank you.

Wilson: Again the motion is on petition 2009-CDU-09, subject to the previous conditions set forth with the addition that under Condition 3; 7 overnight guest and 7 daytime guest additional guest be allowed. Again a motion if favor is a motion to approve the conditional use with the conditions. Vicky Sorensen?

Sorensen: Yes.

Wilson: Margaret Clements?

Clements: Yes.

Wilson: Bernie Guerrettaz?

Guerrettaz: Yes.

Wilson: William Hosea?

Hosea: Yes.

Wilson: Mary Beth Kaczmarczyk?

Kaczmarczyk: Yes.

Wilson: Conditional Use is approved 5 to 0.

The motion in case 2009-CDU-05, Fields Conditional Use for Historic Adaptive Reuse from Chapter 813, in favor of approving the request with conditions as amended, set forth in the motion, carried unanimously (5-0).

DRAFT

REPORTS:

Planning/Wilson: Just a quick announcement it and Dave can chime in on this, it may be that we have to have an in-person meeting in November depending on the governor's orders. So, we will let you know in advance on that and see what options are available.

Kaczmarczyk: If that is the case, I cannot make a 5:30 meeting, it would have to be moved 6.

Wilson: Ok.

Kaczmarczyk: I am already having to take off a half hour early to make the meeting as it is.

Wilson: Ok.

Kaczmarczyk: Working on South Dakota time.

Guerrettaz: Looking forward to being with all of you folks in person.

Kaczmarczyk: Masked and socially distanced.

Wilson: Hey, Bernie I am going to bring some plexi glass to put around you!

Kaczmarczyk: Any reports tonight?

Wilson: That is all I have.

Kaczmarczyk: Meeting adjourned.

Legal/Schilling: No report.

The meeting adjourned at 8:48 P.M.

Sign:

Attest:

Mary Beth Kaczmarczyk, Chairman

Larry J. Wilson, Secretary

DRAFT

DRAFT

DRAFT