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**BOARD OF ZONING APPEALS
Hybrid Meeting - Minutes
April 6, 2022 - 5:30 p.m.**

CALL TO ORDER

ROLL CALL

INTRODUCTION OF EVIDENCE

APPROVAL OF AGENDA

APPROVAL OF MINUTES: October 6, 2021, November 3, 2021, December 1, 2021, January 5, 2022

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

ROLL CALL: Margaret Clements, Dee Owens, Skip Daley, Guy Loftman

ABSENT: None

STAFF PRESENT: Jackie Nester Jelen, Director, Anne Crecelius, Planner/GIS Specialist, Tammy Behrman, Senior Planner, Daniel Brown, Planner/GIS Specialist

OTHERS PRESENT: David Schilling, Legal, Tech Services

OATH OF OFFICE – Guy Loftman

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, as amended, carried unanimously.

APPROVAL OF MINUTES:

Motion to continue approval of all meeting minutes to next meeting, carried unanimously.

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ADMINISTRATIVE BUSINESS:

- 1. ADR-21-3 Findings of Fact for ADR-21-3 at 5100 S Victor Pike**

OLD BUSINESS:

- 1. CDU-21-6 Goodroad General Contractor (Rural) Condition Use**
One (1) 5.05 +/- acre parcel in Richland Township, Section 20 at
3350 N Starnes RD. Owner: Goodroad, Glenn & Ashley
Zoned AG/RR. Contact: acrecelius@co.monroe.in.us

NEW BUSINESS:

- 1. VAR-22-5 Smith ECO Area 2 Variance to Chapter 825**
One (1) 5.50 +/- acre parcel in Clear Creek Township, Section 11 at
3197 E Will Sowders RD. Owner: Smith Family Revocable Trust
Zoned AG/RR. Contact: tbehrman@co.monroe.in.us
- 2. VAR-22-6 Hutcherson DADU Condition #55 Variance to Chapter 802**
One (1) 22.29 +/- acre parcel in Richland Township, Section 21 at 3223 N
Thomas RD, parcel #53-04-21-400-016.000-011.
Owner: Hutcherson, Lisa & Shawn
Zoned AG/RR. Contact: acrecelius@co.monroe.in.us

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OATH OF OFFICE

Loftman: I, Guy Loftman, due solemnly swear that I will support the Constitutions of the United States of America and the State of Indiana and that I will faithfully and impartially perform my duties as a Monroe County Board of Zoning Appeals member according to the law and the best of my skill and ability, on the 6th day of April 2022.

Clements: Thank you, Mr. Loftman. If you would be so kind as to sign it then we will give it to the Planning Office so that they can keep it on file. Thank you so much and welcome to our Board of Zoning Appeals.

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ADMINISTRATIVE BUSINESS

- NEW STAFF MEMBER

Clements: Ok, so we are moving to Administrative Business section of our meeting and I would be so delighted if you would kindly introduce your colleague.

Nester Jelen: Yes. We have Daniel Brown in the audience. He is our newest Planner II and he started with us about a month ago. We are excited to have Daniel. He comes to us from most recently Nashville, Tennessee but his alma mater is in Georgia. We are excited to have him and he has been a great asset to the office so far.

Clements: That is wonderful. Welcome Daniel. We appreciate having you join us and it is nice to meet you again. I would like to recognize that Ms. Nester Jelen has been promoted to the position of Director of the Planning Department. We congratulate you and we look forward to your continued excellent service for Monroe County Planning and we know that the excellent staff that you have will do everything to make us all successful in everything we try to do. So, congratulations!

Nester Jelen: Thank you.

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ADMINISTRATIVE BUSINESS

- ELECTION of the CHAIR of the BOARD of ZONING APPEALS

Clements: The next item would be the election of the Chair of the Board of Zoning Appeals and if there is a motion on who would like to serve or if anybody would like to serve, please say so now.

Daley: What? **I want to nominate you.**

Owens: **Second.**

Daley: So let it be done.

Clements: I will humbly serve if I am elected.

Nester Jelen: Let me go ahead and call the roll on Margaret as the Chair. Dee Owens?

Owens: Yes.

Nester Jelen: Margaret Clements?

Clements: Yes.

Nester Jelen: Skip Daley?

Daley: Absolutely.

Nester Jelen: Guy Loftman?

Loftman: Yes.

Nester Jelen: And I believe, Margaret, you were the Vice Chair, prior. Is that correct?

The motion to elect Margaret Clements as Chair of the Board of Zoning Appeals, carried unanimously (4-0).

Clements: Yes we will need a Vice Chair. Is there someone that would like to serve as Vice Chair tonight? **I would like to nominate Skip Daley.**

Owens: I will **second** that.

Nester Jelen: Ok, I will call the roll. Margaret Clements?

Clements: Yes.

Daley: Nominated I will not run, no...

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Nester Jelen: Skip Daley?

Daley: Sure.

Nester Jelen: Guy Loftman?

Loftman: Yes.

Nester Jelen: Dee Owens?

Owens: Yes.

Nester Jelen: Ok, motion passes unanimously. Thank you.

The motion to elect Skip Daley as Vice Chair of the Board of Zoning Appeals, carried unanimously (4-0).

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ADMINISTRATIVE BUSINESS

1. ADR-21-3 Findings of Fact for ADR-21-3 at 5100 S Victor Pike

BOARD ACTION: Clements introduced the petition.

Loftman: May I Madam President? This is a matter in which I filed documents with the Plan Commission concerning the substance of it. Therefore, it appears to me I should recuse myself and hereby recuse myself from any consideration. But I will remain physically present to preserve the quorum. If that is appropriate.

Clements: Thank you very much. Is that suitable, Mr. Schilling?

Schilling: Yes. The law says that 50 percent of the Board members have to be present.

Daley: It doesn't say they can't recuse?

Schilling: And you meet that with Guy's presence here. You have your quorum with the electronic participation and the 2 physically present who are able to vote. So, I would say it is probably ok. This is a new rule and there just hasn't been any further guidance on that.

Loftman: But we will take yours.

Schilling: I would say let it fly.

Clements: Yes and see how it turns out. In order to do the business of the county and the business of the Board of Zoning Appeals we do have to make these kinds of considerations as we go forward and just so long as you don't weigh in on substance of the issues right now but your presence is welcome because we really value you in order to maintain the quorum. So, thank you.

Loftman: It is nice to feel important.

Clements: Ok, so Ms. Nester Jelen.

STAFF ACTION:

Nester Jelen: Tech Services, if you wouldn't mind promoting my username to panelist just so I can share my screen that would be helpful. Thank you. Ok, included in the packet you will find the Findings of Fact that we put together for the case ADR-21-3. I believe that Margaret, Skip and Dee were present for that meeting as well as Vicky Sorensen and Mary Beth Kaczmarczyk and those 2 members are no longer, actually it was Bernie Guerrettaz. So, we have a few members that are no longer present on the Board of Zoning Appeals. But the Findings of Fact are put together by the Legal Department to verify how the vote was taken and it is solidifying that vote that you have already taken back in December. I am not sure if we have a quorum enough or not to vote on this tonight but I would be happy to go through any of the findings if you had questions on it or if you want to go through anything.

**MONROE COUNTY
BOARD OF ZONING APPEALS**

**FINDINGS OF FACT, CONCLUSIONS AND DECISION
ON DOCKET ITEM ADR-21-3**

Docket Item ADR-21-3 is before the Monroe County Board of Zoning Appeals (“Board”) by request of the Petitioner, P & G Associates LLC (“Petitioner”), for review of a Use Determination issued by the Monroe County Planning Director (“Director”), and the Board, having heard and reviewed this matter on December 1, 2021, now enters the following findings of fact, conclusions and decision: **Findings of Fact**

Based upon the matters submitted, the Board finds the following facts:

1. On September 23, 2005, Petitioner became the owner of property located at 5100 S. Victor Pike, Bloomington, Indiana (“Property”).
2. When Petitioner acquired ownership of the Property, Petitioner continued the previous owner’s use of the Property as a fuel station that included, among other activities, overnight truck parking.
3. On August 10, 2021, Petitioner submitted a Use Determination Form, requesting a determination whether overnight truck parking, among other specified activities, may be lawfully conducted on the Property under the Monroe County Zoning Ordinance.
4. On September 15, 2021, the Director issued a Use Determination concluding that overnight truck parking is not a permitted use of the Property under the applicable version of the Monroe County Zoning Ordinance (adopted by Ordinance 1986-19, effective August 29, 1986).
5. On October 6, 2021, Petitioner filed an Appeal of Administrative Determination, requesting that the Board reverse the Director’s Use Determination for the Property.

6. The Zoning Ordinance (1986) stated, in pertinent part, as follows:

Except as provided, no building or premises shall be used for any purpose other than permitted in the zoning district in which the building or premises is located. No land or lot area shall be so reduced or diminished so that the yards or open spaces are smaller than prescribed.

7. Before a commercial building was constructed on the Property, the Property was zoned Limited Business (LB) under the Zoning Ordinance (1986).
8. Under the Zoning Ordinance (1986), districts “[d]esignated ‘LB’ (limited business) are to provide areas for business uses that are compatible with nearby residential areas.”

9. The pertinent business uses of the Property permitted by the Zoning Ordinance (1986) in the LB District were gasoline service station and public parking area.
10. Truck freight terminal was a business use permitted by the Zoning Ordinance (1986) in the LB District only upon special exception approval.
11. The Board has never approved a special exception for use of the Property as a truck freight terminal.
12. The Zoning Ordinance (1986) defined “Gasoline Service Station” as follows:

A retail business providing automotive fuels and lubricants directly to customer vehicles. Incidental repair, replacement and servicing of customer vehicles shall be considered as an accessory use. Removal and repair of major automotive components, the repair and painting of body parts and the machining of automotive parts shall not be considered as an accessory use.

13. The Zoning Ordinance (1986) defined “Vehicle” as “[a]ny motor vehicle, automobile, motorcycle, truck, trailer, semi-trailer truck, tractor, bus, school bus, mobile home or motor bicycle.”
14. The Zoning Ordinance (1986) defined “Parking Area, Public” as follows:

An area, other than a street, used for the temporary parking of more than four (4) automobiles and available for public use, whether free, for compensation or as an accommodation for clients or customers.

15. The definition of “Parking Area, Public” was amended by passage of Ordinance 1996-36 to state:
A public parking area is an open, hard-surfaced area, other than a public way or street, intended to be used for the temporary, daily, or off-street parking of passenger automobiles and commercial vehicles under one and one-half (1-1/2) tons rated capacity, and available to the public, whether for compensation, free, or as an accommodation to clients or customers.
16. In 1996, the zoning map was amended to change the LB District where the Property is located to Pre-Existing Business (PB).
17. The Zoning Ordinance defines the PB District as follows:

The Pre-Existing Business (PB) District is defined as that which is primarily intended to accommodate commercial and business service uses that were in operation prior to the adoption of this zoning ordinance. The intent of the PB District is to identify locations of commercial activity that are not supported by the Comprehensive Land Use Plan, but where commercial and service operations continue to exist. This District is identified for the purposes of maintaining commercial activities with business zoning, while at the same time not allowing for the expansion of new business activity proximate to the location of the PB

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District. Expansion of the business is permitted within the lot of record. The type of business may change to one of equal or lower intensity as identified on Table 2-1 *Permitted Land Uses*.

18. When the Property was re-zoned from LB to PB, a truck stop/travel plaza was not a permitted use in any Zoning District.
19. Truck stop/travel plaza was permitted as a conditional use in the Heavy Industrial (HI) District upon passage of Ordinance 2014-24.
20. The Zoning Ordinance defines “Truck Stop/Travel Plaza” as follows:

A development oriented to the service of trucks, including the sale of fuel to truck drivers, and provision for support facilities for truck drivers. They may also be utilized by non-truck traffic and the interstate traveler. Business activities which are customarily accessory and clearly incidental and subordinate to the truck stop or travel plaza, may include but not be limited to: scales, truck wash, tire repair and sales, barber shop, restaurant with or without alcohol service, shower facility, convenience store, truckers lounge (for services such as television/exercise/internet access etc.), motel/hotel, laundry, chain rental, vehicle fuel and consumer propane bottle dispensing. The facility may allow for the temporary, daily, or overnight parking (excluding for the loading and unloading of cargo) of commercial motor vehicles which are enroute to or from a destination along an interstate freeway system, for free or for a fee that may be independent of any other use on the premises. The term “truck” shall mean a commercial vehicle driven by a ‘truck driver’ who is required to have a Class “A” CDL (Commercial Driver’s License) license or equivalent.

Conclusions

Based upon the foregoing findings of fact, the Board concludes as follows:

1. Gasoline service station and a public parking lot were permitted business uses on the Property when it was zoned LB and could continue when it was re-zoned PB.
2. Before Ordinance 1996-36 was passed, only automobiles were permitted to temporarily park as an accommodation for customers in the public parking area of the Property.
3. Ordinance 1996-36 expressly excluded commercial vehicles over one and one half (1½) tons from parking in the public parking area of the Property.
4. The business use of the Property as a gasoline service station and public parking lot could be changed to another type of business of equal or lower intensity in the PB District; however, it could not be changed to a “Truck Freight Terminal,” which a use was permitted in the LB District only upon special exception approval.
5. Overnight truck parking is not a permitted use of the Property.

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Decision

Based upon the foregoing findings of fact and conclusions, the Board now **AFFIRMS** the Director's Use Determination for the Property.

QUESTIONS FOR STAFF – ADR-21-3 – Findings of Fact

Clements: Do members of the Board of Zoning Appeals, with the exception of Mr. Loftman, have questions for staff on this item? It is something that we have discussed before and voted on before.

Owens: No, I don't have any.

Daley: I have a question. Can you put up the screen that shows how people voted in the previous?

Nester Jelen: Sure.

Daley: I don't see that and I am sure it was here and I am missing it.

Nester Jelen: So, Mary Beth Kaczmarczyk, Margaret Clements and Vicky Sorensen voted to affirm and Bernie Guerrettaz, Skip Daley voted no.

Daley: That is what I thought.

Clements: Ok. Do you have any other questions Mr. Daley?

Daley: Not at this time.

Clements: I would like to ask members of the public if you would like to weigh in on this particular case. If so, please raise your hand those members who are physically present here and I would also like to invite the people online, on zoom or who are calling in to raise your virtual hand on zoom or to press*9 on telephone to indicate that you would like to speak concerning this matter. I don't see that anyone has expressed an intention to speak. So, we come back to the members of the Board of Zoning Appeals for a motion and our options are to affirm the Director's determination and we could also affirm it with the development of review conditions in the staff report or we could delegate to the Secretary, continue to the next meeting, or some other actions. If members of the Board of Zoning Appeals would like to make a motion, if none **I will make a motion and that would be to Affirm the Director's previous Decision** as we had discussed before. That is my motion if there is another member of the Board of Zoning Appeals who would like to second that...

PUBLIC COMMENT – ADR-21-3 – Findings of Fact: None

BOARD ACTION – ADR-21-3 – Findings of Fact

Owens: I **second**. I second that.

Nester Jelen: Ok. Mr. Schilling, do you want to clarify the vote or do you want me to clarify the vote a bit? It is a vote to approve the Findings of Fact from case ADR-21-3.

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Clements: Yes, sorry.

Nester Jelen: That's ok. I had the voting sheet out. Ok. So, Margaret Clements made the motion. Dee Owens made the second.

Daley: It is the same motion from December. Correct?

Schilling: Well, it is just, the motion is do you approve the entry of these findings that support the Board's earlier decision? So the decision has already been made.

Daley: Correct.

Schilling: This is the factual and legal basis for that decision.

Clements: So, there was a majority decision to affirm the Director's decision and that carried. Now, this is just to affirm that prior Board decision.

Schilling: Technically it is just to list the facts and the conclusions of law that caused the Board to make that prior decision.

Clements: Yes.

Owens: Yes.

Clements: Into the formal record.

Nester Jelen: I will go ahead and call the roll. Margaret Clements?

Clements: Yes.

Nester Jelen: Skip Daley?

Daley: Yes.

Nester Jelen: Guy Loftman recuses himself.

Loftman: Recused.

Nester Jelen: Dee Owens?

Owens: Yes.

Nester Jelen: The motion passes 3 to 0, 3 to 1. (Guy Loftman abstained from vote).

The motion in case ADR-21-3, Findings of Fact for ADR-21-3 at 5100 S Victor Pike, in favor of approving findings, carried unanimously (3-0), with Guy Loftman abstaining from vote.

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OLD BUSINESS

1. CDU-21-6

Goodroad General Contractor (Rural) Condition Use

One (1) 5.05 +/- acre parcel in Richland Township, Section 20 at

3350 N Starnes RD. Owner: Goodroad, Glenn & Ashley

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

BOARD ACTION: Clements introduced the petition.

STAFF ACTION:

Crecelius: Absolutely. Thank you Margaret. We have heard this before I believe at the February meeting. This is a Conditional Use request for the Rural General Contractor. A Conditional Use is a by right if they can meet the conditions laid out under the Conditional Use Chapter of the zoning ordinance. There were some gaps in meeting the requirements, so we are going to go through those and we believe they have all been met now. So, I will pull those all up here shortly. This property is located in Richland Township as you can see on the left. On the right is a pictometry photo showing the currently 2 separate legal lots of record. One of which has the barn on it to the north and a residential home and garage are to the south. Here is their previous site plan and letter to the Board of Zoning Appeals requesting this Conditional Use. The Conditional Uses first requirement was that the site has a minimum lot size of 5 acres, they currently meet that. I am going to skip one more. The requirement of number B, which is the presence of a primary residence on the property is required and that the owner/operator records an affidavit and commitment stating that they will reside on the property full-time. Jumping ahead a little bit, staff is recommending approval with conditions. I have laid out the conditions here that are relevant that would then fulfill the next 2 requirements, so B and C. The first condition is that the lots are legally combined using language from Chapter 804, which states for Planning and Zoning purposes they are combined. So, it will go from 2 buildable lots to 1, both of which are already developed. That fulfills B. The second condition is recording that affidavit, so that is already required once they record that affidavit that they will reside full-time on the property, B will be met. C requirement of the Conditional Use is also met through condition 1. With an updated site plan we are able to show that they meet the requirement for screening of outdoor storage or just the entire storage area. So, they are showing screening shown in a blue, this here is a fence line in blue and there will be a line of trees that they have also talked about that will be in addition, which would be allowed and would not count towards a 100 by 100 outdoor storage area that is required. The last requirement was originally the outdoor storage may now include green fill waste. The bottom right photo has shown some green fill that that was confirmed by the petitioner that it was no green fill, that it was being used for their residential use and residential heating site. So, that is now met. So, overall staff recommends approval of the Conditional Use petition for the General Contractor Rural Use of Chapter 802 and 813 with the following conditions to be met by October 6, 2022;

- 1) Combine lots 53-04-20-300-002.000-011 and 53-04-20-300-012.000-011 for Planning and Zoning purposes per Chapter 804-2 (B)(4) and 813-10 (C)(17)(B).
- 2) Record affidavit stating they will reside on the property full-time per 813-10 (C)(17)(B)
- 3) Complete requirements per RW-22-65
- 4) Petitioner meet all site plan requirements as shown in Exhibit 2

Does anybody on the Board have questions?

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RECOMMENDED MOTION

Staff recommends Approval of the conditional use petition for General Contractor (Rural) of Chapter 802 and 813 with the following conditions to be met by October 6, 2022:

- 1) Combine lots 53-04-20-300-002.000-011 and 53-04-20-300-012.000-011 for Planning and Zoning purposes per Chapter 804-2 (B)(4) and 813-10 (C)(17)(B).
- 2) Record affidavit stating they will reside on the property full-time per 813-10 (C)(17)(B)
- 3) Complete requirements per RW-22-65
- 4) Petitioner meet all site plan requirements as shown in Exhibit 2

QUESTIONS FOR STAFF – CDU-21-6 - Goodroad

Daley: Did the petitioner seem amenable to the conditions?

Crecelius: Yes. We met for the first Board of Zoning Appeals meeting and we did have a meeting after that with the Planning Staff. We worked through some of the areas that were lacking. So, they went ahead and provided us documentation that they would be meeting and agreed to all of the conditions of the Conditional Use. They have updated their site plan. We had some concerns originally about meeting that 100 by 100 so they adapted so all of these shown really are just requirements of that Conditional Use and they have to agree to that. They did propose a longer timeframe for meeting these conditions.

Daley: And you said October 6th.

Crecelius: Staff is recommending a shorter timeframe of October 6th, yes.

Daley: What was the rationale for that shorter timeframe?

Crecelius: This site is currently enforcement of a use that is not permitted in the zoning. So, since we are pursuing this we wanted to see a shorter timeframe because the site will technically stay in enforcement until these conditions are met.

Daley: The joining of the properties, the logistics can feasibly happen in that timeframe?

Crecelius: Yes they can.

Daley: Ok.

Clements: Thank you Mr. Daley. Do other members of the Board of Zoning Appeals have questions for Ms. Crecelius?

Loftman: Well, this is sort of a background question. The petitioners are filing an affidavit that they will reside on the property. If they sell the property 3 years from now does the new owner have to live there if they want to be a contractor or what happens when there is a change of ownership?

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Creceilius: Sure. So, if somebody else were to buy it and they weren't a contractor, it would just be a residential home but if they wanted something that fell under that contracting business they would be able to as long as they also resided there as well.

Loftman: But if you wanted to move your contracting business there and not live there, you would be in violation and this wouldn't apply to them, they wouldn't be in compliance if they curate on the contractor business without living there.

Creceilius: Correct.

Loftman: Great. I just wanted to make sure I had the flow correct. Thank you.

Clements: Thank you Mr. Loftman. Ms. Owens, do you have any questions?

Owens: No, I don't. I think it is pretty straight forward. Thank you.

Clements: Thank you. I would like to see if Mr. and Mrs. Goodroad are here and if they would like to address the Board of Zoning Appeals. If so, would you come up to the electron and sign in. Then raise your right hand and I will swear you in. You both will speak?

PETITIONER/PETITIONER'S REPRESENTATIVE – CDU-21-6 – Goodroad

G. Goodroad: Yes.

Clements: Both of you please sign in and raise your right hand. You will have 15 minutes total to address the Board of Zoning Appeals and the Planning Staff. Do you swear to tell the truth, the whole truth and nothing but the truth?

G. Goodroad: I do.

A. Goodroad: I do.

Clements: Ok. Thank you very much and we look forward to hearing from you.

G. Goodroad: Obviously, I am the current owner, Glenn. The reason we are asking for additional time, the 6 months obviously if you are trying to do anything to add onto our covered area, which I was correct in our first meeting whenever I stated that it is covered area. Outdoor storage is the only that is the 10,000 square feet. I was correct and I want that noted also because I felt like you tore me up and the lack of your knowledge didn't portray the aspect that I have done the research. We are doing our part. We are actively working with Anne and trying to do our part. I appreciate Skip stepping in because I felt like you guys were going to deny us right away without somebody stepping in and intervening that this could be handled. So, I do appreciate that. Like I said we are asking for more time because it takes time to do anything, especially with building materials, labor restrictions or anything else. Obviously, we can get most of that done within the 6 month time period that they are asking for but that additional area that is needed for indoor storage that is going to be a real tight constraint and I know that other contractors that have been granted this variance have been granted one year from date of approval. So, for us to ask for less than that I think that is

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showing a little bit of favoritism whether it is us or anybody else. Like I said I know for a fact that it has been one year from date of approval and you guys can go back to your January meetings and look through it. So, I feel like that should be granted to each and every one of us if that is going to be the steadfast approach. Giving people to do the time to do things necessary. We are not trying to debate anybody. You can speak with Anne about that. We have answered any questions. We have spoken with her in a timely manner trying to present and making sure that we are under compliance. So, whenever we ask for that I believe that should be something that is definitely should be held accountable. The ability to put our properties together limits us in the near future, so us having to join our properties is well, more than a taxation of the entire property all as one residential versus what the current zoning is for our property that does effect everybody and whether or not we choose to do anything with the appropriate I mean, obviously we have to do whatever you guys tell us. That is kind of the point where we are at, is that you make decisions that are effecting everybody's livelihood in our household. Monroe County is the most difficult place to operate a business and I hope that you guys take consideration to that every single day that you are up here on this Board that you know that you are effecting people and how hard it really is in this county. I just want to take my time to say that it is difficult being an owner and trying to do the right thing. We have several other companies and I am not going to be like the company that turned me in but there are other companies out doing other things that are definitely way worse than what we have going on in a private held property, so just a consideration in knowing that things happen for a reason and I get that. We are here to do our part and we want Monroe County to continue to grow but also want an aspect of knowing that these decisions made are effecting people's lives and I hope that you guys take that into consideration.

Clements: Thank you. Thank you, Mr. Goodroad. Ms. Goodroad.

A. Goodroad: I don't think he left anything to say.

Loftman: Could you pull the mic down?

A. Goodroad: I don't think he left anything for me to say but I did the majority of the paperwork on this so I requested the time. When we met with Anne she said give yourself enough time. I mean, he works sometimes 7 days a week, so having the time to do this stuff on our property outside of his business is going to take time. But we were told, give yourself enough time, put a reasonable amount of time on there. We don't want to do 6 months and then come back to where we don't have then things done and then we are not in compliance again. We are trying to be reasonable. We aren't just asking for years to get it done.

Clements: Do members of the Board of Zoning Appeals have questions for Mr. and Mrs. Goodroad?

Daley: You discussed a "reasonable amount of time". What is a reasonable amount of time in your?

A. Goodroad: We just asked for 1 year from the date of approvals. We didn't even know when this would be approved, so we just said 1 year form date of approval but most of those could be done sooner rather than later. But getting permits and getting the properties joined we didn't have any idea how long those things would take.

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Clements: Do you have any further questions for Mr. and Mrs. Goodroad?

Daley: The one year timeframe that you are requesting is that based on estimates? Is that based on quotes that you have for work? Are you doing the work on your own? I am trying to understand if a year is an arbitrary number or if it is a feel good number or if it is a realistic number.

A. Goodroad: I think it was a conformable number so it didn't feel like you were under a gun to get it done. But it is going to be concrete so many feet of the driveway, putting up fence, planting those trees, getting things moved, maybe in addition to the barn, so it is a lot of moving parts. Ken will be done. I think it will take, I personally think it would take more than 6 months to get all of the things done. There is cost, I mean, this thing along has cost us thousands of dollars. A few years ago we had an attorney working on this so there is a huge cost just to get to use our property the way we have been using it.

Daley: Thank you.

Clements: I would just obviously if you have a lawn care business that you are entering your busy season, obviously. Do any of the members of the Board of Zoning Appeals have any further questions for Mr. and Mr. Goodroad? Dee, if you have a question, please raise your hand.

Owens: I am sorry, ok. I am raised my hand. There it is. Now let me lower my hand. Actually, in regards to what the Goodroads have said, can I ask Anne is the reason for 6 months is the matter because this is under enforcement? This is not just something that needs to be done but because actually there is an ongoing enforcement and the means that every day that goes by they are out of compliance. Is that correct?

Creceilius: That is correct.

Owens: Ok and that is why an accelerated timeline as opposed to not having an enforcement and having something that needs to be done. This is what I am guessing so I hope that clarifies a little bit. Thank you.

Clements: Thank you Ms. Owens and thank you Mr. and Mrs. Goodroad. I would like to turn to members of the public. If you are here present in this room and you would like either in favor or opposed to this petition would you please raise your hand or come up to the electron? I see no one. If you are online via zoom, if you would like to speak pertaining to this case please raise your virtual hand or press *9 on your telephone so that we can know that you would like to speak. I don't see anyone. So, I would like to return to the Board of Zoning Appeals for any further questions of staff. I have one and that is what is the level of the implications for the enforcement issue and is there a danger to the public, etcetera?

SUPPORTERS – CDU-21-6 – Goodroad: None

FURTHER SUPPORTERS – CDU-21-6 – Goodroad: None

REMONSTRATORS - CDU-21-6 – Goodroad: None

ADDITIONAL QUESTIONS FOR STAFF – CDU-21-6 - Goodroad

Nester Jelen: I believe that the only complaint that we received for this case was several years back and we haven't heard any other complaints in the area. We don't have any issues. I think Highway Department conditions for the Right of Way Permit is just that they do make the required improvements that any landowner in the county has to make when they put in a new driveway, so I don't think there is anything that is necessarily pressing. It is just a matter of trying to close out this case and move it from enforcement to compliance and we typically when we're in enforcement situations give it a shorter timeline but we understand the petitioners.

Clements: Would it be burdensome for the county to have it be open for year that they have requested? Would it be burdensome?

Nester Jelen: I don't think given that we have not received further complaints and there is not any kind of hazard, nothing is in the right of way or anything like that, I can't think of anything right now.

Clements: Ok, thank you. Mr. Daley has a motion.

FURTHER QUESTIONS FOR STAFF – CDU-21-6 – Goodroad

Daley: I do. **I motion that the Board approves the Conditional Use petition with the 4 recommendations that are listed and the petitioners are allowed a period that ends March 31, 2023 to complete the conditions.**

Clements: I will **second** that. If you would kindly call the roll.

Nester Jelen: Sure, I will just make a note Dee when you vote if it is possible at all to turn the camera on just so we are meeting the electronic attendance policy requirements that would be awesome.

Owens: It has been a rough day on the internet here in the country but yes, I will do that.

Nester Jelen: Ok. Let me just go ahead and clarify the vote. The vote is to approve the conditional use for General Contractor of Chapter 802 and Chapter 813 with the following conditions to be met by March 31, 2023;

- 1) Combine lots 53-04-20-300-002.000-011 and 53-04-20-300-012.000-011 for Planning and Zoning purposes per Chapter 804-2 (B)(4) and 813-10 (C)(17)(B).
- 2) Record affidavit stating they will reside on the property full-time per 813-10 (C)(17)(B)
- 3) Complete requirements per RW-22-65
- 4) Petitioner meet all site plan requirements as shown in Exhibit 2

Skip Daley?

Daley: Yes.

Nester Jelen: Guy Loftman?

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Loftman: Yes.

Nester Jelen: Dee Owens?

Owens: Yes.

Nester Jelen: Margaret Clements?

Clements: Yes.

Nester Jelen: Motion passes 4 to 0.

The motion in case CDU-21-6, Goodroad General Contractor (Rural) Condition Use, in favor of approving the variance, with conditions as attached to motion, to be met by March 31, 2023, carried unanimously (4-0).

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NEW BUSINESS

1. VAR-22-5

Smith ECO Area 2 Variance to Chapter 825

One (1) 5.50 +/- acre parcel in Clear Creek Township, Section 11 at 3197 E Will Sowders RD. Owner: Smith Family Revocable Trust
Zoned AG/RR. Contact: tbehrman@co.monroe.in.us

BOARD ACTION: Clements introduced the petition.

STAFF ACTION:

Behrman: Sure. It is located at 3197 East Will Sowders Road. The lot is 5.5 acres in size. It is zoned Agricultural/Rural Reserve so it does meet minimum lot size and it is in the Environmental Constraints Overlay Area 2 of Lake Monroe. You can see in that location map some of the fingers off of the reservoir there. The request is a variance to Chapter 825 to disturb slopes greater than 15 percent so that the petitioners may access their property. The disturbance would be approximately 30' linear feet and the purpose would be to establish an ingress/egress driveway to get to the site. Some site constraints that we have are utility easements and a Sinkhole Conservancy Area that was identified. There are permits associated with a Building Permit listed at the bottom there and a Septic Permit and a Driveway Permit from the Highway Department. This is the site conditions. You will notice that right on the southern part of the property, East Will Sowders Road there is a red strip and those what we have identified as slopes greater than 15 percent. It is about 30' wide. The Highway Department has issued a Driveway Permit or I should say a Right of Way Permit so that they could do work right at that road entrance but with Planning's requirements and the ECO Overlay can't disturb slopes greater than 15 percent. So, that is what the variance is ultimately for. Some other things that I want to point out is that there is a large utility easement that runs east/west right there through the property that you might be able to make out and then that dark pink line is the Sinkhole Conservancy Area that was located. A Sinkhole Conservancy Area, so what we do is we take the largest closed contour, which is the lighter pink, we buffer it by 25' according to Chapter 829 of our ordinance. I could have filled in the center. I didn't fill in the center here. It was sloppy, I guess. These are some aerials of the site. I point out that staff looked at the driveways that run adjacent to the property on the west side and the east side and as I hiked all the way back to that kind of where that green pin is you can see those houses that are set back in there but it didn't seem feasible to request that the petitioner utilize another person's driveway and require an easement. Plus, there is that Sinkhole Conservancy Area that is quite large that encompasses part of the property that would have to be something that you get around. These are some of the site photos. The circle in red designates where the Highway Department centered the driveway on the property and you can see that there are those steeper slopes like right next to the road there that are about 30' along the edge road. I threw in a picture of the utility easement that runs through the property. In the packet you will see the petitioner's letter and also the site plan that they had submitted which does include an erosion control plan. So, they do show where stock piles are going to be. This was a pro-active site plan that we received from the petitioner so they should follow this kind of Stormwater Prevention Plan associated with the development of the site, which was helpful. I included on the left you will see the southern part where Will Sowders Road is, those slopes that are restricting the access to the property are in grey along the road there and then just them showing their site plan on the northern side of the lot and that is on the right hand side. Staff is making a recommended motion for VAR-22-5 to approve the design standards variance from Chapter 825 for ECO 2 Slope Restrictions. We just felt like the driveway could not

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in this case be redesigned to avoid the 15 percent restricted slopes and that even trying to utilize existing driveways on either side of the property was not a practical request. You can't control for someone to give an easement.

CASE NUMBER	DETAIL	RECOMMENDED MOTION
VAR-22-5	ECO Area 5 (15% Slope) from Ch. 825	Approval

812-6 Standards for Design Standards Variance Approval: In order to approve an application for a design standards variance, the Board must find favorable findings for all three (3) criteria, A, B, and C, listed after the agenda within the BZA packet.

Recommended Motion Conditions or Reasoning:

Approve the design standards variance to Chapter 825 for ECO 2 slope restrictions. The driveway cannot be redesigned to avoid the 15 percent restricted slopes. Utilization of existing driveways from adjacent properties is not a practical request.

QUESTIONS FOR STAFF – VAR-22-5 – Smith

Clements: Do you have questions for staff?

Loftman: How steep is the driveway? It is more than 15 feet or degrees but is it?

Behrman: It is tricky to depict that. I took a lot of pictures and these were the ones that I thought were most applicable. I didn't do one of those slope maps that showed the severity but able to just take a few steps up and hike through the woods to get to the flat part of the property. Because the rest of the property is very flat. The contour lines here if you are taking into consideration the 50 foot stretch and envisioning a 7 and half foot drop with those 2 foot contours, then it really is right at about 15 percent I would say.

Loftman: So, it is above 15 but not much above 15. Would that be a fair interpretation?

Behrman: Yes I would say so now looking at these contour lines.

Loftman: Thank you.

Clements: Can you show me where the house is going to go?

Behrman: Sure. I will probably just pull up the site plan again. So, the driveway is, I don't know if you can see my mouse or not but the driveway is to the south and then they are going to run the drive all the way around the edge of that Sinkhole Conservancy Area to put the house and the septic.

Clements: I see.

Behrman: Staff had actually considered if it would make sense to try to push all of the development

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forward but once you take into account setbacks, that utility easement that runs through the property and the Sinkhole Conservancy Area, it didn't seem practical. Plus the other houses in the area are all setback as well.

Clements: Ok and I see Ms. Owens has her hand raised.

Owens: Thank you Margaret. Yes, I reviewing all of this I think this sounds like a perfectly reasonable request. This slope is looks like it is right at about 15 or not much over and it looks very reasonable to me. So, I just wanted to point out that I think the property is not, it is not a ridiculous ask. So, that is all. Thanks.

Clements: I am just staring at something and I just want to talk about it. I have never seen a sinkhole that big.

Behrman: Next to the lake? There are a few out in that area. I was told that the history of this site that the person who ended up on this property had been relocated when the reservoir was originally made in the late 50's. They were relocated to this property and they ran cattle on the farm. You can tell it is kind of a second woodland. You have to wonder if it is truly a sinkhole. But I wouldn't want to second guess it because it could be but it could have been a farm pond but that would have been a big farm pond. It does have like brush and like a second growth forest underneath it because you could tell that at one point it had some sort of grazing impact by what I was told was cattle. When I was out there it wasn't pristine woods. That is actually on the northern end of the property is where it was.

Clements: But how prevalent are sinkholes generally in the area?

Behrman: I did not do an analysis.

Clements: Pardon me?

Behrman: I did not do an analysis of other adjacent sinkholes in the area but there some areas that I can think of that are ECO that also have sinkholes. Rayletown Road has some.

Clements: Ok. I would like to turn to the public and see if the petitioner or the petitioner's representative is here, Mr. and Mrs. Smith. Oh, she is online, so if you could unmute Beth Smith and after you are unmuted I would like to swear you in.

PETITIONER/PETITIONER'S REPRESENTATIVE – VAR-22-5 – Smith

Smith: I am here.

Clements: Ok, can we hear you? If you would please raise your right and do you swear to tell the truth, the whole truth and nothing but the truth?

Smith: I do.

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Clements: Thank you Beth Smith. Thank you. We would like to hear from you about your petition and have a total of 15 minutes to make your case to us. Please, we look forward to hearing from you.

Smith: Ok, thank you. The sinkhole really isn't, I don't know I don't think it is that large for that area. It is just the conservancy to make sure that there is no issues with it is what makes it look so large. We also did try to locate a house on the front of the property just not to have a crazy long driveway but we had they septic person, I can't think of his name, Jim Brown, out and he tried twice to find some place to be able to put a septic field up front that stayed away from all of the different utility easements and they determined that there was really only the half acre back there where have the house and the garage to be located. That was about the only buildable part on the whole 5 and half acres. So, that is why we are trying to go in all the way back there. My surveyor said that yes it is a 15 percent grade but we are only going through 12 feet of that and then it starts to level off, so it is not like its 30 feet or 50 feet of 15 percent grade that we are trying to go through. I am not sure what else you want me to tell you.

Clements: I would just like to see if any members of the Board of Zoning Appeals have a question for you. My Daley or Mr. Loftman do you have any questions or Ms. Owens do you have any questions for the petitioner?

Owens: I do not. Thank you.

Clements: Thank you Ms. Smith for appearing and making your case to us. Now I will turn to members of the public and if there are members of the public who are present who would like to wither in favor or in opposition to the case, please raise your hand on zoom or if you are here in the room come up to the electron and sign in. If you are calling in by telephone press*9 so that we know that you calling in and that you would like to speak. There is no one. We come back to the Board of Zoning Appeals then for further discussion and/or a motion.

SUPPORTERS – VAR-22-5 – Smith: None

FURTHER SUPPORTERS – VAR-22-5 – Smith: None

REMONSTRATORS - VAR-22-5 – Smith: None

ADDITIONAL QUESTIONS FOR STAFF – VAR-22-5 – Smith: None

FURTHER QUESTIONS FOR STAFF – VAR-22-5 – Smith

Loftman: **I move to approve the petition.**

Clements: Could you kindly make the recommended motion? I think I understand that **you would like to approve the design standards variance to Chapter 825 for ECO 2 slope restrictions and that is for case number VAR-22-5, and you are recommending approval.**

Loftman: **That is just what I was going to say.**

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Owens: I **second** that.

Nester Jelen: I can call the roll.

Clements: Thank you.

Nester Jelen: So, this is on the Smith ECO Area s variance to Chapter 825. I recommendation to approve the design standards variance. Vote of yes is a vote to approve. I will go ahead and call the roll. Skip Daley?

Daley: Yes.

Nester Jelen: Guy Loftman?

Loftman: Yes.

Nester Jelen: Dee Owens?

Owens: Yes.

Nester Jelen: Margaret Clements?

Clements: Yes.

Nester Jelen: Ok. Motion passes 4 to 0.

The motion in case VAR-22-5, Smith ECO Area 2 Variance to Chapter 825, in favor of approving the variance, carried unanimously (4-0).

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NEW BUSINESS

2. VAR-22-6

Hutcherson DADU Condition #55 Variance to Chapter 802

One (1) 22.29 +/- acre parcel in Richland Township, Section 21 at 3223 N Thomas RD, parcel #53-04-21-400-016.000-011.

Owner: Hutcherson, Lisa & Shawn

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

BOARD ACTION: Clements introduced the petition.

STAFF ACTION:

Crecelius: Thank you Margaret. Enjoy this short BZA tonight because next month is looking like it is going to be kind of long. This variance is from the Detached Accessory Dwelling Unit Conditions #55. Detached Accessory Dwelling Unit would allow a second dwelling in certain zones. This one is zoned Agricultural/Rural Reserve. The DADU permitted use allows, has some conditions, most of which are all met here except for one and that is condition number, subsection not important but it is overall Condition #55. It has a requirement that livable space is not to exceed 1,000 square feet that would not include an unfinished utility closet, a garage, only livable space. This variance request was triggered by a permit application for a second residential dwelling. The property currently has one dwelling already built on it and had formally contained a manufactured home. Overall this is the whole site. It is 22.29 acres. Here is the petitioner's letter to the Board of Zoning Appeals and current site plan. On their submitted site plan to the left you can see the small existing old home with a newer home to the right that is marked as 30 by 52 with a garage. Here is an image of the interior floor plan. This is an older pictometry photo. The existing home is towards the bottom and the manufacture homes which have been removed are to the north. This is how the site currently looks. So, the petitioner is requesting that the second dwelling has a livable space of 1,560 square feet. A variance would be required in order to approve a DADU of that size. It is somewhat of a unique situation for property is that the existing home would be small enough to be permitted as a DADU except one of conditions of the DADU, Condition #55 is that it must meet current standards of the residential building, mechanical, electrical, energy and environmentally critical area codes. The Building Department weighed in on this situation and they determined that really they would be unable to prove that the existing home would be able to meet those codes. So, the petitioner has chosen to pursue the new home as being permitted as that DADU, Detached Accessory Dwelling Unit. On the top left of the screen is the existing home. I believe it was built in the 1950's. There were some requirements along North Thomas Road for the Right of Way Permit, not necessarily a factor for this variance request but the Right of Way Permit does have a condition to move that driveway to a safer entrance kind of more towards the hill that we see on the left side photo. One of the conditions of the DADU is to have a shared driveway so they will be removing one driveway, moving it for a better sight distance per the Highway Permit and then using that as the main entrance for both homes. This is the site where they are proposing the new DADU. This is where the 2 manufactured homes were originally placed. Back in December there was originally a Sliding Scale Subdivision that was submitted for this property for the 22 acres. They had proposed to create 3 lots. The property is partially on FEMA Floodplain. This was done through Deckard Land Surveying. Sometime in February the petitioner changed routes and they withdrew their application to create 2 additional lots, 2 additional buildable lots. Staff recommendation is to recommend denial for this variance request for the Detached Accessory Dwelling Unit, Condition #55 of 1,000 square feet of livable space

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due to self-created practical difficulties. If the petitioner had pursued the 3 lot sliding scale the configuration could have been changed to accommodate even the plan that they have now, which would not have had any kind of conditions of livable space on the property. It would have been the Preliminary Plat that was submitted was a by right subdivision. It did have buried utilities waiver request that would have been a Plat Committee approval or denial. So, why the petitioner changed course we are unsure, that is with the surveyor but this would have created a new buildable lot and this variance would not have been needed for a second dwelling. Does the Board have any questions?

CASE NUMBER	DETAIL	RECOMMENDED MOTION
VAR-22-6	DADU Condition #55 (1,000 sq. ft.)	Denial

812-6 Standards for Design Standards Variance Approval: In order to approve an application for a design standards variance, the Board must find favorable findings for all three (3) criteria, A, B, and C, listed after the agenda within the BZA packet.

Recommended Motion Conditions or Reasoning:
Self-created practical difficulties.

QUESTIONS FOR STAFF – VAR-22-6 – Hutcherson

Clements: Do you have any questions Mr. Loftman, Mr. Daley? Ms. Owens has her hand raised.

Owens: Yes, I do. Really you just answered it but my question is why in the world would you do this which is more likely to be denied than the sliding scale? So, perhaps I will wait to ask that of the owner.

Clements: Do you have any initial response to Ms. Owens question?

Crecelius: No. I would love to hear. I really was communicating solely with Eric Deckard with Deckard Land Surveying.

Daley: I would like to reserve the right to ask a couple of questions after I hear what the petitioner has to say.

Clements: Sure and in fact that is something that I will always do after the public has spoken and the petitioners has spoken, we turn it back to us for any last questions or discussion.

Daley: It's a great policy.

Clements: I would like to turn it to the petitioner to see if the petitioner is here or the petitioner's representative, either, oh, hello. If you would come in and sign in. You must be Lisa.

PETITIONER/PETITIONER'S REPRESENTATIVE – VAR-22-6 – Hutcherson

Hutcherson: I am.

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Clements: It is nice to meet you. Would you please raise your right hand and say your name and that you swear to tell the truth, the whole truth and nothing but the truth?

Hutcherson: My name is Lisa Hutcherson and I swear to tell the whole truth and nothing but the truth.

Clements: Ok, thank you very much. Well, we would like to hear from you about your petition and you have 15 minutes to tell us what we need to know.

Hutcherson: This has been a long process for us. I will say you did have a question I will just start with the survey. My husband contacted the survey and doing everything else and there was a miscommunication. We really just wanted our property surveyed for our use. I was not aware that he made it a subdivision until after we were submitting all of our things and then all of a sudden I had all of these permits and it was kind of crazy. I didn't know what was happening so I talked to the surveyor and he tried to explain it to me. It didn't make any sense to me and I contacted the Health Department because there was like sewer permits. This is really confusing. I am sorry. I feel like I am talking in circles because I am really nervous.

Clements: It's ok. Just take your time.

Hutcherson: But it was just a miscommunication with the surveyor. We never wanted our property subdivided. I think he may have suggested that to my husband to subdivide it for future but we had no intention of dividing that property and selling it. We want to keep it as a whole property. We wanted to build a home because this...

Clements: Just take your time.

Hutcherson: If we did go ahead and proceed with the easy route and do the subdivision and build the house on that second plot, my mom lives in the small house. We want to move there so I can take care of her. I don't want to be farther away. I want to be right there. It is just a perfect area. My great grandparents owned that property. There is 3 families living on that property at one time for several years. I am not sure how to explain why we wanted to do that. Our whole initial thing was to have my mom's house as the, or our house that my mom lives in as the DADU and build a new home. But obviously we couldn't meet those conditions and then like I said the survey just threw a whole kink into it that I wasn't even prepared for because that is not what we wanted to do. I am not sure if that even explains everything in a roundabout way.

Clements: I think it does. You wanted to keep the property integral as 1 property and that you wanted that Detached Accessory Dwelling Unit for your mother so that you could care for her and your intention is to keep the property whole.

Hutcherson: Yes. Well, not only that but even after all of that happened we are looking at it, that second plot it is all woods. The only open area is there toward the road front and we don't want damage the integrity of the woodlands right there. It is a big karst area. Here is sinkholes. Here is a lot of wildlife on our property. It is a big property.

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Clements: 22 acres, right. That is pretty nice.

Hutcherson: It is the only property on Thomas Road that connects to Loudon Road.

Clements: That is very nice.

Hutcherson: We just wanted to keep it as it is.

Clements: If you don't mind I am going to turn to the other members of the Board of Zoning Appeals to see if they have questions for you. Mr. Daley, Mr. Loftman or Ms. Owens? Ms. Owens has her hand raised, so we will start with you.

Owens: Thank you very much. Lisa, the difference of an imaginary line of sliding scale would not alter your plans to take care of your mother in any way that I can see. I am trying to understand why you think that is not a solution that works for you because actually it doesn't make any difference. You still have the property. You still could build the house without recourse other than the other rules you have to follow to build a house. So, I still don't understand why that is a deal for you.

Hutcherson: Well, the reason why is because we would be building quite a distance away from where her home is instead of next to it, right next to it. Do you have the subdivision survey that he submitted?

Clements: The staff will bring it up onto the screen here.

Hutcherson: We also didn't want to have to clear a bunch of woods and things like that. We wanted to preserve our woodlands there.

Clements: You kind of want the accessory unit to be close to the mother ship, so to speak.

Crececius: It sounds as though if all parties had been on the same page a design could have been accommodated to get there but I think there, sounds like there has been a lot of miscommunication.

Hutcherson: Most definitely.

Owens: I agree, that's what I think. Thank you.

Clements: Do other members of the Board of Zoning Appeals have other questions?

Loftman: I think I understand. Let me just make sure. With your proposal you can place the houses where you want them. With the sliding scale subdivision the new house would have to be farther away from the old house than what you wanted.

Hutcherson: It would be considerably farther away and we would have to tear the woods down. That was never our intention in even getting a survey. We just did the survey for our own, we wanted to know where our property lines were.

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Loftman: And will your mother live in the smaller house?

Hutcherson: She currently does, yes.

Loftman: Yes already does and you want to build this additional house so you can be close to her.

Hutcherson: Yes.

Loftman: Thank you.

Clements: Ok, thank you.

Daley: I would like to ask a quick question. I would actually like to ask staff but perhaps have a follow-up while you are still at the mic if you don't mind. This question is for Mr. Schilling actually. I understand the law. If this were 998 square foot house they were preparing to build it would fall under the law. Is that correct?

Schilling: If it were 998, yes.

Daley: Alright. So, I understand what the law is. What is the rationale for that law and why would the extra 500 square feet that they are proposing violate the county?

Schilling: I think the rationale for the law would be that the intent was to have sort of a primary residence and a smaller accessory residence so that there were 2 large dwellings on one lot.

Daley: But in essence that is what they are doing. They are just kind of looking to shift and we are finding that the existing structure would not meet the code. Is that what this is all about? Because the existing structure would not meet the current code it classify it? In order for us to call it something else they would need to upgrade everything for the home that has been there and fine for habitation for all of these years. Is that correct?

Schilling: That is the testimony, yes.

Daley: Sounds like some bureaucracy to me. Ok. I don't have a follow-up now. Thank you.

Loftman: How big is the existing house?

Hutcherson: It is I believe around 800 square feet.

Loftman: So, you would end up with a house under 1,000 square feet and a house over 1,000 square feet but they are being built in the wrong order.

Clements: That's right.

Hutcherson: Pretty much.

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Loftman: And the old one doesn't meet some standard but I don't understand what standard it doesn't meet but, you want to help me out Skip.

Daley: To reclassify it, it wouldn't meet the standards but it is still deemed habitational. So, your confusion is probably the same as me throwing my hands in the air.

Clements: This is why we exist. I would just like to turn to members of the public and see if there are any members of the public who would like to speak either in favor or in opposition to this petition. I don't think I see anyone here. Oh, great. Please come back. You have to come back up and you are already sworn in. She doesn't have to be sworn in again.

SUPPORTERS – VAR-22-6 – Hutcherson

A. Goodroad: When was the law made for the 1,000 square feet? I am sure that was considered a small home back in day but today 1,500 square feet is a small home. I am in real estate so I know that is a small home. Maybe a 100 years ago 1,000 square feet seemed like a big home but I think you kind of have to take into account when these laws are written and sometimes they become outdated.

Clements: Thank you Ms. Goodroad. I would like to just see if there are any other members of the public who would like to speak in favor or in opposition or if you are online, please raise your hand or press *9 on the telephone to let us know that you would like to speak. I don't see anyone. Do you see anyone? I come then to the Board of Zoning Appeals for any further questions, discussion or deliberation or a motion.

FURTHER SUPPORTERS – VAR-22-6 – Hutcherson: None

REMONSTRATORS - VAR-22-6 – Hutcherson: None

ADDITIONAL QUESTIONS FOR STAFF – VAR-22-6 – Hutcherson

Daley: I am inclined to make a motion on case...

Clements: Could I just make one comment before we do that?

Daley: Please do.

Clements: Well, it just seems to me that the values expressed are first of all noble. They want to protect more of the forest and that is zoned agriculture forest rural reserve, Farm and Forest and their intentions for their property seem to be in line with the values that we espouse as a county and also the whole purpose of a Detached Accessory Dwelling Unit and the reason why the rule was passed that you are trying your best to take advantage of it for exactly these family purposes. I would just like to say to my fellow colleagues that those are my insights. That's all.

Owens: My hand is up as well.

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Clements: Oh, great, Dee.

Owens: Thank you. The survey that has the 3 lot sliding scale, is it not, can't the survey be changed so the house is split so the imaginary line allows them to build where the mobile homes were? That can't be done?

Creceilius: Hi, Dee.

Owens: I am sorry, say again.

Creceilius: The road frontage is more than 400 feet, which is more than the 200 foot requirement for Agricultural/Rural Reserve lots. I believe a design could have been accommodated.

Owens: Yeah, ok and that is my question. If you take that survey and you just mark the line to then meet the 200 foot road frontage then you have got a sliding scale and problem solved. Right?

Hutcherson: Well, it is so small that I can't see it now but the surveyor said it is not 400 feet.

Creceilius: We are going to double check.

Owens: Thank you.

Loftman: While we are checking that it seems to me if you can do it way "a" or way "b", it seems subdivisions encourage building more houses in the country where frankly my rule of thumb is fewer houses is better. So, if I can accomplish the same goal without subdividing and having more, the petitioner's goal, without creating smaller lots in the country I am prone to like that and to go back to the surveyor who doesn't understand what you want. I know that would be another "x" dollars. Is there any reasoning I am missing as to why we can't just let her have her way?

Daley: I am going to interrupt you because I believe the staff already has a pending question that they need to answer and then they can get back to you.

Loftman: Oh, thank you.

Creceilius: Ok, so the plat does state that the width is under 400. So, that would mean that you wouldn't be allowed to have 2 lots in front. You would have to build farther back. So, Mrs. Hutcherson is right. Where they want that home placed could not be done with the sliding scale subdivision.

Owens: Ok, ok and then follow-up to that. As it says right here on everyone's screen the law says that the Board must find favorable findings for all 3 criteria; A, B and C. So, can you repeat again what those are so we are ensured that we are having favorable findings for all 3?

Creceilius: It is practical difficulties.

Nester Jelen: Dee, let me go ahead and pull that up.

DRAFT

Clements: You may sit down if you wish. Thank you for coming tonight.

Nester Jelen: I will go ahead and read A, B and C into the record. A is the approval including any conditions or commitments deemed appropriate will not be injurious to public health, safety and general welfare of the community because; and then there are 4 subsection parts to that. I am going to go ahead and share my screen if Anne can hit that, so that you can read it along with me. Number 1 is it would not impair the stability of a natural or scenic area. Number 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. Number 3; the character of the property included in the variance would be altered in a manner that substantially departs from characteristics sought to be achieved and maintained within the relevant zoning district. That is, the approval, singularly or in concert with other approvals sought or granted, would not result in a development profile; height, bulk, density and area, associated with a more intense zoning district and thus, effectively rezone the property. Number 4; it would adequately address any other significant public, health, safety, and welfare concerns raised during the hearing on the requested variance. 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; and we have subsection 1, 2 and 3. Number 1; the specific purposes of the design standard sought to be varied would be satisfied. Number 2; it would not promote conditions onsite or off-site detrimental to the use and enjoyment of other properties in the area and it would adequately address any other significant property use and value concerns raised during the hearing on the requested variance; and 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.

Owens: Thank you very much. That's, we got at least 2 lawyers in the room. On that last one, that is kind of lawyer speak to me. Sorry guys, sorry Dave. Including any conditions, commitments deemed appropriate is the minimum variance necessary to eliminate practical difficulties in the use of the property. What does that mean really? Sorry, I just want to make sure I am clear.

Clements: In this case to me it means that the minimum that we do is allow her to build rather than make her subdivide, you know, that is the minimum that we do. We approve it.

Owens: It is the least restrictive then as far as the property owner goes in essence, ok.

Clements: As such also to me her proposal goes a long way toward not impairing the stability of the natural area and also it does not affect the use and value of the area adjacent the property and that, well, I guess I should just make that a motion. Right? You do it.

FURTHER QUESTIONS FOR STAFF – VAR-22-6 – Hutcherson

Daley: In case number VAR-22-6, with all due respect to the work of the Planning Department and their recommended denial, we are a human board and I think reason and rationale need to be a part of our decisions, finding public health, public safety or environmental concerns, I motion that we approve the petitioner.

DRAFT

Loftman: **Second.**

Nester Jelen: Ok, it has been moved and seconded approve the Hutcherson DADU Condition #55 Variance to Chapter 802, which is 1,000 square foot limitation. A vote yes is a vote to approve the variance. Guy Loftman?

Loftman: Yes.

Nester Jelen: Dee Owens?

Owens: Yes.

Nester Jelen: Dee can you turn your camera on just for a sec while we see you said yes?

Owens: Sorry, it worked, ok.

Nester Jelen: Yes? Ok. Thank you. Margaret Clements?

Clements: Yes.

Nester Jelen: Skip Daley?

Daley: Yes.

Nester Jelen: Alright, the motion carries 4 to 0 to approve the variance.

The motion in case VAR-22-6, Hutcherson DADU Condition #55 Variance to Chapter 802, in favor of approving the variance, with amended findings, carried unanimously (4-0).

DRAFT

REPORTS:

Clements: Is there anything further to discuss? Anything that the staff would like us to know or have we done it all tonight?

Planning/Nester Jelen: For anyone listening if you are interesting in applying to be on the Board of Zoning Appeals, we do currently have a vacancy. I believe Mary Beth's was a Commissioners appointment, so we make that announcement as well at the Commissioners Meeting.

Clements: Thank you everyone for your good work tonight and thank you to the public for showing up and talking with us about your real concerns. Thank you.

Owens: Thank you

Clements: Is there a motion to adjourn?

Owens: So moved.

Clements: Any objections? Have a good evening everyone.

Legal/Schilling: No reports.

The meeting adjourned at 6:52 P.M.

Sign:

Attest:

Margaret Clements, Chairman

Secretary, Jackie Nester Jelen

DRAFT