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**BOARD OF ZONING APPEALS
Virtual Meeting via ZOOM - Minutes
March 2, 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

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

ROLL CALL: Vicky Sorensen, Margaret Clements, Dee Owens

ABSENT: Mary Beth Kaczmarczyk, Skip Daley

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

OTHERS PRESENT: David Schilling, Legal, Tech Services

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:

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

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ADMINISTRATIVE BUSINESS:

OLD BUSINESS: None.

NEW BUSINESS:

- 1. VAR-22-2a** **Dungca Side Yard Setback Variance to Chapter 804**
- 2. VAR-22-2b** **Dungca Buildable Area (15% Slope) Variance to Chapter 804**
One (1) 1.01 +/- acre parcel in Van Buren Township, Section 25 at 5650 S Nature Trail DR, parcel no. 53-09-25-302-003.006-015.
Owner: Joshua J & Alicia S Dungca
Zoned ER. Contact: dmyers@co.monroe.in.us

- 3. VAR-22-3a** **Brummett Front Yard Setback Variance to Chapter 833**
- 4. VAR-22-3b** **Brummett Side Yard Setback Variance to Chapter 833**
One (1) 0.41 +/- acre parcel in Perry Township, Section 11 at 1320 S Smith RD, parcel no. 53-08-11-101-030.000-008.
Owner: Heather Brummett
Zoned RS3.5/PRO6. Contact: acrecelius@co.monroe.in.us

- 5. VAR-22-4** **Rex Fish Front Yard Setback Variance to Chapter 804**
One (1) 1.67 +/- acre parcel in Clear Creek Township, Section 35 at 2593 E Pedigo Bay DR, parcel no. 53-11-35-200-012.000-006.
Owner: Rex & Melinda Fish
Zoned SR. Contact: dmyers@co.monroe.in.us

- 6. ADR-22-1** **Appeal of Director's Interpretation of Proposed Use at 1238 N Loesch RD.**
One (1) 8.5 +/- acre parcel in Richland Township, Section 36 at 1238 N Loesch RD, parcel no. 53-04-36-200-016.013-011.
Owner: Arrow Properties LLC
Zoned IG. Contact: jnester@co.monroe.in.us

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NEW BUSINESS

1. VAR-22-2a

Dungca Side Yard Setback Variance to Chapter 804

2. VAR-22-2b

Dungca Buildable Area (15% Slope) Variance to Chapter 804

One (1) 1.01 +/- acre parcel in Van Buren Township, Section 25 at 5650 S Nature Trail DR, parcel no. 53-09-25-302-003.006-015.

Owner: Joshua J & Alicia S Dungca

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

BOARD ACTION: Clements introduced the petition.

STAFF ACTION:

Myers: Yes, I am here. Can you hear me ok?

Clements: Yes.

Myers: Ok. My connection is a little bit unstable so I might turn off my video but we shall see. This is the Dungca Side Yard Setback Variance from Chapter 804 and the Buildable Area 15 Percent Slope Variance from Chapter 804. It is located at 5650 South Nature Trail Drive in Van Buren Township, section 25. The purpose for these 2 variances is the petitioner is proposing to extend their existing rear upper deck that is attached to the home. They are extending it approximately 8' and they will also be replacing the lower deck with a poured concrete patio type design. Upon submission of a Building Permit for this work, Planning staff found out that the structure of the home was actually within the side yard setback, which is a required 15' in the Estate Residential zone. This house was built before the current owners, the petitioner, were living here and that was in 2011. Whenever there is a structure that is pre-existing nonconforming, if you will, to one of the setbacks or buildable area any type of work that is expanding the footprint or any work that is being done onto the home typically triggers the need for variances. Since the structure was built in 2011 it is not technically considered pre-existing nonconforming under Chapter 803, so it is not eligible for the 25 percent expansion allowance. The new upper deck will measure 352 square feet while the original upper deck was 218 square feet. That second number was an approximate measurement made by Planning staff using maps and GIS software. The second variance to this petition, the Buildable Area, occurs from the fact that the extension of the deck will encroach into an area that has 15 percent or more in slope. So, the Side Yard Setback and the Buildable Area variances are here for this new deck remodel essentially. Ok, so going through some maps here. The location map is on the top left corner of your screen and then we have the slope map here in the large portion of the screen. You will note that the majority of the rear area behind the home is over the 15 percent designation. You can also see here in the northern corner of the home really kind of gets really close to the property line here. We can see the exact measurement here in a moment when we get to the site plan. It is also in a platted subdivision. It is listed I believe as Lot 6 in the McCaffey Woods Subdivision. Here we have the petitioner's submitted certified site plan. You will note here that home does encroach into that 15 foot side yard setback. Right now it sits about 2.4' away from the property line. Here are some construction plans for the project regarding the deck and we can come back to this if we have any questions about the specifics, essentially extension of 8', a new stairway and new concrete pad underneath. Alright, moving onto some pictures. Here is the rear of the house. You can see the existing deck here and then the gradual grade or slope downward this direction continuing to the rear of the

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home. Just another view of how that grade gradually declines and is classified as the 15 percent from the maps. More pictures here. You can see the deck again in this left picture and then on the right just kind of an idea of how that slope looks coming from the south of the house. Alright, here we have the letter to the Board of Zoning Appeals provided by the petitioner essentially stating that they are asking for both the Side Yard Setback for the 15' as well as the Slope variance. Which brings me to staff's recommendation for this variance petition. Overall, staff recommends approval of both variances citing that any new development, construction onto the existing single family residence would first require a side yard setback variance due to its already built nature within that setback and then also citing that the existing deck structure would first require a buildable area variance due to its location being already within the non-buildable area. I will now take any questions.

CASE NUMBER	DETAIL	RECOMMENDED MOTION
VAR-22-2a	Side Yard Setback from Chapter 804	Approval
VAR-22-2b	Buildable Area 15% Slope from Chapter 804	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:

- VAR-22-2a: **APPROVAL**; any new development/construction onto the existing single family residence would first require a side yard setback variance;
- VAR-22-2b: **APPROVAL**; any modification to the existing deck structure would first require a buildable area variance to the 15% slope.

QUESTIONS FOR STAFF – VAR-22-2a & VAR-22-2b - Dungca

Clements: Ms. Nester Jelen has a question.

Nester Jelen: I am sorry Margaret. I didn't mean to raise my hand. I don't have any questions.

Clements: Ok. Do members of the Board of Zoning Appeals have questions? Ms. Owens.

Owens: Thank you ma'am. Yes, looking at that picture I believe it was photo 6, I see that the slope is, the one just before that one, well, it shows the side view there, there you go, it may be the slope but they are not asking to do anything very major that I can see. I mean, it is pushing it out a little bit, yes. It will be a little bit on a slope but it is not huge so I just wondered if there was any other comment on that.

Myers: As far as the staff's perspective?

Owens: Yes.

Myers: Sure. The way that the slope is measured from a buildable area standpoint is I believe it is

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measured over 50' and if the percent of that 50', the length of it counts as that percentage then that is what it comes up as, especially with the maps, the GIS maps and those squares, those blocks that you can see or pixels if you will, those are fairly large so the resolution isn't perfect as you can note here. It looks like according to this map at least that the home itself is very far into the steep sloped area that is over 15 percent and that is what we generally go off of.

Owens: Right. Thank you.

Clements: Do other members of the Board of Zoning Appeals have questions for staff? If not we can turn to the petitioner or the petitioner's representative and if you are here I think the technical staff will unmute you and we will swear you in.

PETITIONER/PETITIONER'S REPRESENTATIVE – VAR-22-2a & VAR-22-2b - Dungca

Dungca: This is Joshua Dungca.

Clements: Would you please kindly raise your right hand, state your name and swear to tell the truth, the whole truth and nothing but the truth.

Dungca: I, Joshua Dungca swear to tell the truth, the whole truth and nothing but the truth.

Clements: Ok. Great. Thank you so much Mr. Dungca. How can we help you tonight?

Dungca: Our family would like to extend this deck as you can see in the appeals letter and as one of the members had said if you look at the slope on the back where we are extending the bottom portion of the deck is maybe 3' to 4' out. The upper portion is going out 8'. So, it is pretty flat at that one point. Now, the other variance, the side setback and I understood the rules for that and I didn't know, I talked to the Planning Office about this, I was kind of curious how this property even got approved to be built that way if this was built in 2011. We did not get a survey done prior to building this house because we have bought houses before and we have never had to get a survey. So, it didn't make sense to me to get a survey so we didn't understand why that was issue but we understood the rules and that is why we decided to go forward with this variance process. We just really want this variance done so we can extend out deck to pretty much enjoy the outside. I don't know if you saw the backyard, it looks very beautiful back there and our deck is very small. We have 4 people in our family. We have quite a few get together and so we would like to be able to spend some time out there in the summer.

Clements: You do have a beautiful lot. It makes your heart feel really happy to be in Indiana when you can see a backyard like that. I wonder if there are members of the Board of Zoning Appeals who have questions for Mr. Dungca. Ok. Mr. Dungca are there other members that would like to speak to the BZA address this or is that it for your testimony tonight?

Dungca: That was it for my testimony. I don't think any of my neighbors, they talked to me and they didn't have any issues with it. I have asked. They didn't see any reason to call in.

Clements: Ok. We still must certify but thank you Mr. Dungca for coming in tonight and I would

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like ask the public. Are there members of the public who are here either on zoom or on the telephone who would like to speak in favor of this petition? If so, please raise your hand on zoom or press *9 on your telephone to be recognized. If staff could tell me of that happens I would be grateful.

Nester Jelen: I don't see anyone.

Clements: Thank you. Are there members of the public present who would like to testify against this petition? If so, please raise your hand on zoom or press *9 on the telephone to be recognized. Ok, thank you. We bring it back to the Board of Zoning Appeals of either further discussion or a motion.

SUPPORTERS – VAR-22-2a & VAR-22-2b – Dungca: None

FURTHER SUPPORTERS – VAR-22-2a & VAR-22-2b – Dungca: None

REMONSTRATORS - VAR-22-2a & VAR-22-2b – Dungca: None

ADDITIONAL QUESTIONS FOR STAFF – VAR-22-2a & VAR-22-2b – Dungca

FURTHER QUESTIONS FOR STAFF – VAR-22-2a & VAR-22-2b – Dungca

Sorensen: I will make a motion.

Clements: Ok.

Sorensen: On case number VAR-22-2a, Side Yard Setback from Chapter 804 and 5650 South Nature Trail Drive, I move to approve the Side Yard Setback. On VAR-22-2b, Buildable Area 15 Percent Slope from Chapter 804, I move to approve.

Owens: I will **second** that.

Nester Jelen: I will go ahead and call the roll. The motion is on the Dungca Side Yard Setback variance to Chapter 804 and the Dungca Buildable Area 15 percent slope variance to Chapter 804 for a 1.01 acre parcel at 5650 South Nature Trail Drive. It has been moved and seconded and I will call the roll. Dee Owens?

Owens: Yes.

Nester Jelen: Margaret Clements?

Clements: Yes.

Nester Jelen: Vicky Sorensen?

Sorensen: Yes.

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Nester Jelen: Motion is approved 3 to 0.

The motion in cases VAR-22-2a, Dungca Side Yard Setback Variance to Chapter 804 and VAR-22-2b, Dungca Buildable Area (15% Slope) Variance to Chapter 804, in favor approving both variances, carried unanimously (3-0).

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NEW BUSINESS

3. VAR-22-3a

Brummett Front Yard Setback Variance to Chapter 833

4. VAR-22-3b

Brummett Side Yard Setback Variance to Chapter 833

One (1) 0.41 +/- acre parcel in Perry Township, Section 11 at 1320 S Smith RD, parcel no. 53-08-11-101-030.000-008.

Owner: Heather Brummett

Zoned RS3.5/PRO6. Contact: acrecelius@co.monroe.in.us

BOARD ACTION: Clements introduced the petition.

STAFF ACTION:

Crececius: Absolutely. Thank you Margaret. These are 2 variances, a Front Yard and a Side Yard Setback. The owner is Heather Brummett. It is currently zoned RS3.5/PRO6 under the Monroe County Urbanizing Area Plan. The property is located in Perry Township, Section 11 off of Smith Road. It is currently a residential use, a single family residential use. This variance request has been triggered by a residential permit application for the existing single family residence. The existing home is pre-existing nonconforming structure due to its encroachment into the front yard setback. The required front yard setback from Smith Road is 60' from centerline and additionally there is side yard setback of 12'. The current side yard setback is 8' because the house is existing, which is an encroachment. The petitioner is proposing to increase the residential space of the home by approximately 500 square feet. That would also decrease the size of the existing deck, so kind of swapping area from deck to residential enclosed space. The second would be that under the permit they would be repairing the roof. Apparently it was a poor roof design that has caused issues for them and in order to fix the design of the roof the height of the structure will increase by 4'. Under Chapter 833 zoning the standard side setback for this zone for a single story structure is 8'. Anything beyond a single story, so a second story increases the structure would require an additional 4' to the side setback, which would make the side yard setback a 12' requirement. As of right now the home exists for the front yard setback is approximately 45' from the centerline of Smith Road and the side yard is, the petitioner stated it is approximately 12'. Elevate GIS shows the house a little closer. Of course this is an approximation of the aerial imagery and the parcel boundaries when we use Elevate, so it is hard to tell without a survey or a plot plan. From what measurement Elevate GIS shows approximately 7'. Our original recommendation did include for the side yard setback that there would be a requirement to provide a certified plot plan showing the location of the home specifically for the side yard setback. That would be on the northern side. After the site visit, staff does believe that the home does meet approximately 12' but it cannot be confirmed necessarily without a certified plot plan. So, this is where they will be adding on to their existing home. In fact, this will be a change in space, which is currently deck. This would be the extension and the roof line will change. Right here on the right the small photo, this is Smith Road in the front yard setback. The home is fairly close. It doesn't meet that 60' front yard setback from centerline. The large photo is this northern side yard setback, which staff upon site visit, pacing it, it does appear to be approximately 12'. So, bringing it back to the recommendation. We do recommend approval for the Front Yard Setback from Chapter 833 and approval with condition for the Side Yard Setback from Chapter 833. We leave it up to the BZA to consider whether this condition will be needed or not for the side yard setback. Does anybody have any questions?

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CASE NUMBER	DETAIL	RECOMMENDED MOTION
VAR-22-3a	Front Yard Setback from Chapter 833	Approval
VAR-22-3b	Side Yard Setback from Chapter 833	Approval with Conditions

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.

<p><i>Recommended Motion Conditions or Reasoning:</i> Condition to require a certified plot plan showing the location of the home, specifically showing the northern side yard setback encroachment.</p>

QUESTIONS FOR STAFF – VAR-22-3a & VAR-22-3b - Brummett

Clements: Vicky or Dee do you have any questions for Ms. Crecelius?

Sorensen: I guess I have a question. If they get this certified plot plan what does that establish? It is just showing where the house is?

Crecelius: It would provide, yes the accurate location of the property boundary. I should have noted this is in one of the oldest subdivisions we probably have in the county called Rolling Hills Subdivision. So it is a very old plat and the boundaries are probably really only well-known because of fence lines and tree lines. At the time of filing this variance we did believe that they were much closer to the setback. Now we are not so sure but without more information we wouldn't necessarily be able to say if the variance for a side yard setback would even be needed or not.

Sorensen: Which to me would help if they would ever sell the property we would know where everything is, where now it is like you said it is kind of fence and tree lines. Ok, thank you.

Clements: Ok. If the petitioner or petitioner representative is here and would like to address the Board of Zoning Appeals either Ms. Brummett or Mr. Carver, would you please indicate your presence?

**PETITIONER/PETITIONER'S REPRESENTATIVE –
VAR-22-3a & VAR-22-3b - Brummett**

Brummett: Hi, this is Heather Brummett.

Clements: Thank you. If you would be so kind as to state your name and raise your right hand and state that you swear to tell the truth the whole truth and nothing but the truth?

Brummett: Hi, my name is Heather Brummett. I swear to tell the truth, the whole truth and nothing but the truth.

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Clements: Thank you, Heather. We would like to hear from you. What are you doing? Why don't you talk to us about your cozy home?

Brummett: Thank you very much. We love your 1950's home as you can probably tell from public record. We have owned our home for 15 years. One thing I did want to note was that we had letters submitted from our neighbor that is directly on the north side, both of them, and the one on the south side, so our 3 closest neighbors all submitted letters of support for us to upgrade our home. In short, we have been saving money trying to get new siding, new windows, and a new roof that is much needed for our home. You can't really tell from the pictures but back in the 70's there was an addition added and the roofline goes directly into the side of the house of the part with the new addition. So, if we are going to update the roof we should do it right and the way that it is designed it is problematic because the water from the 1950's portion of the house would literally run into the side of the 1970's addition, right into the wall. So, instead of redoing our roof as it is and it being a bad design waiting for it to leak again, we thought we would go ahead and redo the roof correctly off of the back. So, we submitted a building plan. At first we were just going to update our attic and they said we couldn't do it because our house was noncompliant. So, we said we would pivot and we won't redo the attic we will just add some space on the back because our house is quite small and we have a child. We then came up with another plan to just add space onto the back thinking that it was a problem with the front of the house being as close to Smith Road as it is and then the Planning Department said well, actually you can't make any updates until we get a variance. So, we are here today to ask that you please kindly consider approving our variance. We are not going to do anything to the front or the sides of our home. We just really are trying to update it, made it energy efficient, so our 1950's windows don't blow in cold air in the winter and then fix it so we don't have potential leaks in the future.

Clements: Thank you so much Ms. Brummett. Thank makes perfect sense and you do have a beautiful home. So, thank you for talking with us about your goals. Is there anyone else from your team that would like to speak to the Board of Zoning Appeals or is that your petitioner's testimony?

Brummett: That is a petitioner's testimony. Thank you so much.

Clements: Thank you so much. So, I would like to turn now to the members of the public. Is there anyone present who is here to speak in opposition to this petition? If so, please raise your hand on zoom and if you are calling in by telephone press *9 to be recognized. Ok, we don't see anybody. So, we are moving to members of the public who are here to speak in opposition to this petition. If you are here to speak in opposition to this petition, please raise your hand on zoom or press *9 on the telephone to be recognized. Ok. I bring it back to the members of the Board of Zoning of Appeals for further discussion and/or a motion.

SUPPORTERS – VAR-22-3a & VAR-22-3b – Brummett: None

FURTHER SUPPORTERS – VAR-22-3a & VAR-22-3b – Brummett: None

REMONSTRATORS - VAR-22-3a & VAR-22-3b – Brummett: None

ADDITIONAL QUESTIONS FOR STAFF – VAR-22-3a & VAR-22-3b – Brummett: None

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FURTHER QUESTIONS FOR STAFF – VAR-22-3a & VAR-22-3b - Brummett

Sorensen: I can do a motion.

Clements: Ok, thank you Ms. Sorensen.

Sorensen: **In case number VAR-22-3a, Front Yard Setback from Chapter 833, I move to approve. In case number VAR-22-3b, Side Yard Setback from Chapter 833 I move to approve with condition;**

- 1) To require a certified plot plan showing the location of the home specifically showing the northern side yard setback encroachment at 1520 South Smith Road.**

Owens: I **second**.

Nester Jelen: Ok. It has been moved and seconded to approve VAR-22-3a, Front Yard Setback from Chapter 833 and VAR-22-3b, Side Yard Setback from Chapter 833 with the condition that we require a certified site plan showing the location of the home specifically showing northern side yard setback encroachment. I will call the roll. Margaret Clements?

Clements: Yes.

Nester Jelen: Vicky Sorensen?

Sorensen: Yes.

Nester Jelen: Dee Owens?

Owens: Yes.

Nester Jelen: It has been approved 3 to 0.

The motion in cases VAR-22-3a, Brummett Front Yard Setback Variance to Chapter 833 and VAR-22-3b, Brummett Side Yard Setback Variance to Chapter 833, in favor of approving the variances, with conditions as attached to motion, carried unanimously (3-0).

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NEW BUSINESS

5. VAR-22-4

Rex Fish Front Yard Setback Variance to Chapter 804

One (1) 1.67 +/- acre parcel in Clear Creek Township, Section 35 at 2593 E Pedigo Bay DR, parcel no. 53-11-35-200-012.000-006.

Owner: Rex & Melinda Fish

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

BOARD ACTION: Clements introduced the petition.

STAFF ACTION:

Myers: Thank you. This one is the Rex Fish Front Yard Setback Variance to Chapter 804. The purpose for this variance request is that the petitioner is looking to construct a new 672 square foot detached garage on the property and the proposed location for that detached garage would encroach 15 feet into the required 25 foot front yard setback. The property exhibits an existing 3,089 square foot single family residence with an attached garage and the detached structure will be right across the driveway as we will see in a moment in the site plan. Same as the previous petitions this one came through first as a building permit petition and upon review by Planning Staff it was determined that that a variance would be necessary in order to permit the development. Again, here we have the location map in the top left corner of the screen and then the slope map here much larger. Again, everywhere you see in red is over 15 percent in slope and is non-buildable area. The proposed location for the detached garage structure will be right about in line with the attached garage area here just across the driveway in this little area here where my curser is hovering, so there is no worry for buildable area or anything else, just the front yard setback. Here we have the petitioner's submitted Type "E" Administrative Subdivision that they went through a few years ago. There was a transfer a land between their neighbors and is right about in this area and where my curser is hovering that they are proposing to build the detached garage structure. This is again in the area to get a better idea of the distances and what we are looking at and then on this image we have the proposed development appearing adjacent to or across the driveway from the existing structure. Approximately 36 feet from the existing structure to the south east of that that is where the proposed structure is going. 28 feet by 24 feet or approximately 672 square feet. You will note here on this image that they are showing 10 feet from the property line and that is supposed to be 25 feet per the standards for the zoning district, the Suburban Residential zoning district as well as it is on the Type "E" Plat. The property line does share, or excuse me, this property line here is adjacent to an HOA common area and some more details will come of that in a minute. Here is some aerial imagery of the site. I took some time to draw a small square here of the approximate location of the structure just to get an idea of what it would look like. Then we have a few other images here of the petition site. It is a gated community. I was not able to get in through the gate on the day that I was doing my site visits but these aerial images I believe are sufficient to show us how it looks on the property. Here we have the letter to the Board of Zoning Appeals from the petitioners stating their intentions to construct the detached garage and they would like the 10 foot setback for a number of reasons included that it would be in line with the houses in the area as well their own structure. It benefits for the aesthetics of the neighborhood and as a method to avoid cutting down a maple tree if they were to have to abided by the 25 foot front setback in that same location. They also have some note here about how they talked to their HOA Board and neighbors and that they have no issues with the proposal. Following along with that we have a few letters of support. We do have one from the HOA Board of the Pedigo Bay

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stating that they are in support of the design and the location of the structure and then a personal letter of support from their neighbors, Mr. Jason Cosner stating his support for the location of the structure. Overall, staff recommendation for this petition is actually denial citing that there are no practical difficulties in that the front yard setback issue could be more effectively addressed through the further redesign or relocation of the development, building or structure, citing that there are locations on the property that would be suitable for the detached garage structure perhaps at the end of the driveway or elsewhere that could still accommodate some of the items like aesthetics as well as avoiding cutting down the mature maple tree. I will now take any questions.

CASE NUMBER	DETAIL	RECOMMENDED MOTION
VAR-22-4	Front Yard Setback from Chapter 804	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:
DENIAL; No practical difficulties. The front yard setback issue can be more effectively addressed through further redesign/relocation of the development/building/structure.

QUESTIONS FOR STAFF – VAR-22-4 – Fish

Clements: Do members of the BZA have questions for Mr. Myers?

Sorensen: I have a question. Can you show us where you think that it could be relocated at since you are saying they could do it some place else?

Myers: Yes. Planning Staff was thinking if there was a tree the petitioner was looking to avoid cutting down by moving this structure backward to accommodate the 25 foot front yard setback we were thinking at the end of the driveway in this location here for the detached garage structure. As you will note in the slope map there is plenty of space there from a buildable area standpoint and it would not have to have this variance.

Sorensen: Ok, thank you.

Clements: Ok. I don't have any questions at this time so we would like to hear from Mr. and Mrs. Fish or their representative if you are here. Would you please be unmuted and identify yourself?

PETITIONER/PETITIONER'S REPRESENTATIVE – VAR-22-4 – Fish

Fish: Can you hear us now?

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

Fish: I, Rex Fish swear to tell the truth, the whole truth and nothing but the truth.

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Clements: Ok, thank you Mr. Fish. Why don't you let us know what is going on over there?

Fish: Ok. Thank you very much. Drew has done a very nice job of presenting this and I appreciate that. I think that the things that are most important, one of the things is the letter from Jason Cosner, my next door neighbor, encouraging you to approve the location of this. He is the only neighbor that will see this building directly from his home. If we move it 25 feet back it is doable. It is not as valuable to us if do that because there are issues with that. One is the tree comes down. The other is we can't go directly straight back the driveway because there is a 500 gallon propane tank buried there. So, we are somewhat limited. Although, not totally and we do not have this photo, I don't think but when we move that 25 feet back we tend to infringe somewhat on our neighbors privacy in the back of their house. The backs of our houses are all facing the lake. So the backs of our house are basically the most used part of our houses. So, we prefer not to do that, to not infringe on their privacy. This is my wife Melinda.

M. Fish: Hi. I am sorry we were here when you came Drew to...

Clements: Mrs. Fish, would you please raise your right hand and state your name and swear to tell the truth, the whole truth and nothing but the truth?

M. Fish: I, Melinda Fish swear to tell the truth, the whole truth and nothing but the truth.

Clements: Thank you.

M. Fish: We missed you Drew. We were at our grandson's graduation from military down in Georgia so we were not here when he wanted to come in. But I have planted where he suggested maybe behind their driveway. We are very tree conscience. We have planted 30 trees here and in that area it doesn't show it on the photo but this is the third year of I planted 10 beautiful arbor trees back there so I would hate to cut those down. It is kind of a wild life area back there. You know, there is an eagles nest back there by the lake and there is fox that run through and I think the neighbors like to stay away from the lake as far as we can.

Fish: One other thing that I don't think is terribly obvious is the lot line that we discussing is over 200 feet from the road and all of the area between the lot line and the road is common area, which is not buildable, never can be built on and never will be used for anything other than just being grass and trees. So, it is not like we are going to be encroaching on a neighbor of some sort. There is no neighbor there.

Clements: Thank you Mr. and Mrs. Fish. Well, do other members of the Board of Zoning Appeals have questions for Mr. and Mrs. Fish?

Owens: No, thanks. I think I heard what I need.

Clements: Ok, and so I would like to turn it to members of the public. If you are here to speak in favor of this petition, please raise your hand on zoom or press *9 on your telephone to be recognized. Ok. If you are here in opposition to this petition, please raise your hand on zoom or press *9 on your phone. Ok, I turn it back to members of the Board of Zoning Appeals and I have

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one comment that I would like to say. It was obvious to me through the photos of the property that the additional structure might harm the enjoyment of the property because it might encroach on their view from their windows and having it aligned with the, it seems to me that there is some economic advantages and environmental advantages to have aligned with the door of their garage as their propose. I am also impressed myself by the fact that the architectural review board and the HOA and the neighbors seems to think that this is a good siting for this structure. So, that being said I would like to turn back to other members of the Board of Zoning Appeals and see if they have any questions or statements or thoughts on this or it there is a motion. Ms. Owens.

SUPPORTERS – VAR-22-4 – Fish: None

FURTHER SUPPORTERS – VAR-22-4 – Fish: None

REMONSTRATORS - VAR-22-4 – Fish: None

ADDITIONAL QUESTIONS FOR STAFF – VAR-22-4 – Fish

Owens: Perfectly said, madam. Listening to the petitioners and looking at everything I understand why staff recommends denial and I generally agree with staff on denial. But this makes sense from a living perspective and I think that is what it has to do. So, thank you.

Clements: Thank you. Ms. Sorensen, do you have any comments or questions or a motion?

Sorensen: I would be happy to make a motion.

FURTHER QUESTIONS FOR STAFF – VAR-22-4 – Fish

Sorensen: **In case number VAR-22-4, Front Yard Setback from Chapter 804 at 2593 East Pedigo Bay Drive, I move to approve the variance.**

Clements: I **second**.

Nester Jelen: Ok. It has been moved and seconded to approve VAR-22-4, the Rex Fish Front Yard Setback Variance to Chapter 804 for a property at 2593 East Pedigo Bay Drive. Vicky Sorensen?

Sorensen: Yes.

Nester Jelen: Dee Owens?

Owens: Yes.

Nester Jelen: Margaret Clements?

Clements: Yes.

Nester Jelen: The motion is approved 3 to 0.

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The motion in case VAR-22-4, Rex Fish Front Yard Setback Variance to Chapter 804, in favor of approving the variance, carried unanimously (3-0).

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NEW BUSINESS

6. ADR-22-1

Appeal of Director’s Interpretation of Proposed Use at 1238 N Loesch RD.

One (1) 8.5 +/- acre parcel in Richland Township, Section 36 at 1238 N Loesch RD, parcel no. 53-04-36-200-016.013-011.

Owner: Arrow Properties LLC

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

BOARD ACTION: Clements introduced the petition.

Schilling: Jackie, can I jump in quickly?

Nester Jelen: Yes.

Schilling: Just for the Boards review, this is an Appeal from an Administrative Decision. The application is Arrow Properties. Arrow Properties will be the petitioner tonight. They will present their case first. The Direct, the staff, can respond and then the petitioner, Arrow Properties will have an opportunity for a rebuttal, then it goes to the Board for questions. The decision of the Board is de novo, in other words, you don’t have to give any preference to the Director’s decision. It is if the information is being presented to you for the first time and you are making the decision based on your own assessments and evaluations. That is just the background that I wanted to put out there before the petitioner gets started.

Clements: Thank you, Mr. Schilling.

Nester Jelen: Thank you, Dave. So, I will go ahead and hand it over to over to the petitioner at this time under Rules of Procedure Part B.

Clements: Ok, if the petitioner is here, could you please state your name and raise your right hand, or is it an attorney?

PETITIONER/PETITIONER’S REPRESENTATIVE – ADR-22-1 – Loesch Rd. Appeal

Moss: Hi, I am Chelsea Moss. I am the Engineer for the site.

Clements: Ok, Chelsea could you please raise your right hand, state your name, swear to tell the truth, the whole truth and nothing but the truth?

Moss: I, Chelsea Moss swear to tell the truth, the whole truth and nothing but the truth.

Clements: Thank you. Let’s hear your presentation.

Moss: Ok, good evening. So, I want to give a little background and actually got a little bit more information in some of the information that Jackie included in the packet, so I will reference that a little bit. My client, Arrow Properties, Greg Young is the representative from that corporation contacted me about this project. We had done a design about a similar project down on the south

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side of Bloomington and that property ended of selling. This property on Loesch is the proposed new site. When he originally started looking for properties back in 2018 he worked with Planner Carly Peterson. She is no longer on staff but he had worked with her to look at several different properties to make sure before purchasing that he could move his operations to these and have an idea of what would be involved. So, with this particular property when this came up we went into submitting the Use Determination, I submitted that with the understanding that they had had that conversation, that Carly had said this site will work, we can move forward, you know, no major issues, except for a few variances that he knew he would he would need. There were variances that he had applied for on the other site as well. But as far as use went, we thought we were a go. Upon submitting we were told that the use is not an approved use for the site with the Use Determination and that in order to move forward we would have to rezone this property. It is currently zoned IG. It is in the parcels that are outlined former City of Bloomington Fringe property. It is also in the area that is slated for annexation in a couple of years back into Bloomington. So, upon reviewing the packet I noticed that when he had met with Carly apparently they had actually done a Use Determination at the time. Mind you, this was only 4 years ago. If I had realized that I probably wouldn't have submitted a Use Determination to be honest because if you look at that Use Determination, which is page 72 of the packet, with that Use Determination all that we would be required to do is submit for a site plan filing, not a rezone as the most recent Use Determination is requiring. Carly had stated and confirmed with Larry and Jason Eakin at that time that this would be a Business or Industrial Center. She had included that it would have a Trucking Terminal but also a General Contractor which is really the primary function of this business. The business is Young Trucking and although the business was started primarily as a trucking company years ago, it currently operates as a General Contractor. They do have a large truck fleet. But all of those trucks are used for construction purposes on various construction related jobs. This is not a you know, big truck, highway, semi terminal, something you would see in like Kehe or one of these large trucking terminals. This is a contractor. He has to store his trucks as well as his general construction equipment on site. The proposed development includes a garage, maintenance facility, fueling station as well as an open lot to store the equipment overnight. Most of it will be in use during the work days and not on site but they are storing most of it overnight and between jobs. So, the main thing here is that what we were originally told this property would be used for we are now being told it can't be and I was actually glad to see that had been recorded back in 2018 through that Use Determination.

Clements: Is that the end of your statement?

Moss: Yes.

Clements: Ok. Thank you for sharing that with us. Do members of the Board of Zoning Appeals, can we ask questions of Ms. Moss, Mr. Schilling?

Schilling: Yes.

Clements: Do members of the Board of Zoning Appeals have questions for Ms. Moss? Ms. Owens.

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QUESTIONS for PETITIONER– ADR-22-1 – Loesch Rd. Appeal

Owens: Thank you. I read all of the materials and the previous ok was for a different property and the materials are I think very convincing that Truck Terminal is what this could be viewed as is how it fits into the law, into the acceptable uses and it makes sense to me that a rezone is what should happen as opposed to this particular piece. So, convince me otherwise. I don't see how the Director's Interpretation is incorrect.

Clements: Ms. Moss your hand is raised and also Ms. Owens was speaking about that. You have a response?

Moss: Yes, I do. The Use Determination on page 72, Exhibit 5 is actually for this property. It is the address for the proposed land use is 1238 North Loesch Road.

Clements: Thank you. Staff do you have any statements about this?

Nester Jelen: I do Margaret. I would like to see if you have further questions for Chelsea and then I if it is ok with Dave explain the response.

Clements: Sure. Are there, Ms. Sorensen, do you have questions for Ms. Moss?

Sorensen: Not at this time. Thank you for asking.

Clements: I don't either. Ms. Nester Jelen?

Nester Jelen: Dave, is it ok if I go over the response that I had prepared in the packet? Exhibit 7?

Schilling: Yes.

STAFF ACTION - ADR-22-1 – Loesch Rd. Appeal

Nester Jelen: I will also say that the prior Use Determination for 1238 North Loesch, it did list Business or Industrial Center which is permitted under IG but I believe that in talking with Larry prior to his retirement that the other determination was a Trucking Terminal and General Contractor wouldn't fit under IG because those are not permitted uses in the 833 table. In Exhibit 7 of the packet starting on page 76 I do address what was utilized in order to determine that this use proposed or requested for a Use Determination is a Trucking Terminal. Based on the following bulleted points we looked at the Use Determination for Young Trucking Inc. The use Trucking Terminal was decided based on submitted site plan, which is also in the packet. It includes facilities such as tire shop and truck wash, equipment parking area, gravel pavement surface and a fueling station. One of the answers on the use determination showed a number of vehicles, showed 50 for Young Trucking, which is a significant number of vehicles. There is a significantly sized outdoor gravel parking area for equipment on the site, 58,000 square feet, which if you look at the rest of the site plan the indoor building footprints equal about 20,228 so more than double the size for an outdoor storage area that would be for the building footprints. The definition for Trucking Terminal in 802 is terminal facility used by highway type property carrying vehicles, which may

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include truck maintenance facility. I also bring up principal use and accessory use as a part of the explanation for what is being discussed as maybe a Trucking Terminal and then accessory uses for equipment storage or contractor use. So, when you have a principal use on the land it is the main use on the land, the building or structure as distinguished for subordinate or accessory use. It distinguishes a principal use and you can have accessory uses within the same lot. We had assumed Trucking Terminal was the principal use as shown in the site plan and Use Determination for the property. As Chelsea mentioned we have been working with Arrow Properties and Young Trucking Inc for several years so we have seen that they have submitted 2019 we had a site at 5220 Production Drive, previously was 5200, under Exhibit 4, and when it was located at 5220 Production Drive the owner and design professional at that time did not appeal what use was to be a Trucking Terminal. We actually went through a variance process to rectify the use as Trucking Terminal and get the got approved for a gravel lot for Heavy Equipment Storage. The business is now being located at 1238 North Loesch Road, which is zoned General Industrial and IG does not permit the use of Trucking Terminal. There was 2 applications, 5220 Production and 1238 North Loesch do not appear to be dissimilar but yet an appeal is being sought at this location now that the use is stated as not being permitted. So, I want to go over sort of the Appeal Letter, which is Exhibit 3. The petitioner did apply for an appeal. So, we are looking at this as Dave mentioned, as de novo, how we came up with the determination that it was a Trucking Terminal and then their appeal as well was an exhibit. They had stated that use was better classified as Building Trade Shop in Chapter 833. Building Trade Shop just looking at the dictionary it is a trade such as carpentry, bricklaying and plumbing that are essential to and chiefly practiced in connection with building construction. We didn't find that the use that they had described was specifically fitting in building trade shops and therefore again made the determination it was a Trucking Terminal. In the Appeal Letter the applicant states that equipment and personnel activities extend beyond trucks and material hauling, notably they did not say excludes but other business in addition to trucks and material hauling. In the Appeal Letter the applicant states they currently own 29 pieces or heavy equipment in addition to their trucks. As mentioned in the Use Determination they state they have 50 vehicles which could be in addition to the 20 pieces of heavy construction equipment and that supports Trucking Terminal as the principal use. In the Appeal Letter they state trucks they operate are used for construction project purposes not general transport such as semi-tractor trailer or box trucks and this is an important distinction because the definition for Trucking Terminal does not say that the use is limited to general transport. Although it does list highway type vehicles. When the ordinance for Trucking Terminal went into effect in 2016, several definitions were added at the same time under Chapter 801. Those included Emergency Equipment, which is a specific type of equipment utilized under Trucking Terminal under the LI permission of the use so that undermines the applicants assumption that Trucking Terminal is only referring to general transport vehicles. Also, when we are looking at Use Determinations we have to look at other similarly zoned properties or properties that are considered Trucking Terminals, so I Have included some aerial reviews and addresses for those properties so you can see in the past several years what we have determined to be a Trucking Terminal. There are some similarities between these site plans or these aerials and what were submitted under this Use Determination. This is 1250 North Angelina Lane. We have 4672 West Vernal Pike and 6330 West State Road 48, just as a few example that I pulled from the last 10 or so years. So, the commonalities for each of these sites include area for semi-truck parking that is gravel, building office space, small vehicle parking separated from heavy equipment parking, and these sites also appear similar in use to what is proposed under the Use Determination. In conclusion, the site is zoned General Industrial and has

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been determined to be a Trucking Terminal based on the information submitted. Trucking Terminal is not permitted in the General Industrial zoning district. The applicant was offered the option of rezoning the property to Heavy Industrial but instead has filed for an appeal. The applicant does not address how the Use Determination submitted in 2022 is different from the prior Use Determination for this site at 5220 Production Drive when it was previously determined as a Trucking Terminal. The 1238 North Loesch property itself is surrounded by other industrial type uses and possibly could support a Heavy Industrial rezone but to date that has not pursued. So, I have included at the end of the packet some of the uses that are permitted in General Industrial and you will see that the General Contractor and the Trucking Terminal uses are not permitted in this zone as of now. I can take any questions or refer to Dave if he has anything.

RECOMMENDED MOTION

To affirm the Administrator's Determination.

QUESTIONS FOR STAFF – ADR-22-1 – Loesch Rd. Appeal

Clements: That was a very great presentation. Thank you. Do you have questions for Ms. Nester Jelen or Mr. Schilling? If there are none I am going to turn to the public to see if there are members of the public who would like to speak in favor of this appeal? If so, please raise your hand or press *9 on the telephone. There is no one, I would like...

Nester Jelen: There is one person. Dave?

Clements: Mr. Dave, would please state your name and raise your right hand and swear to tell the truth, the whole truth and nothing but the truth?

Nester Jelen: I don't think we can hear you Dave.

Clements: We can't hear you Mr. Dave. Maybe you have to unmute yourself. If you are on a telephone it would be *6 to unmute yourself.

Nester Jelen: Tech Services, do you have any ideas for Dave to proceed?

Tech Services: He is currently unmuted.

Nester Jelen: Ok. Chelsea, do you know who this person is or could they be called and voice their opinion over the phone?

Moss: I do not know for sure. But let me look at my notes real quick. I don't think I have a phone number for anyone.

Clements: If you could press *6 on telephone to unmute or raise the volume or click unmute on your computer.

Nester Jelen: I will also put the phone number for calling into zoom into the chat and that way they can call in.

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Clements: Ok, while this is worked out I would like to ask if there are members of the public who are here to speak in opposition to this petition. If so, please raise your hand on zoom or press *9 on your telephone to speak in opposition to this appeal. Ok. I don't see anybody. We will just see if Mr. Dave can be unmuted.

Nester Jelen: I put the information for how to call and enter in the meeting id on the screen.

Clements: Yes. Thank you for that. I would like to give it one minute and then we will turn back to discussion among the members of the board and see if the person can be unmuted or able to speak. Because we are told he is unmuted. So it must be a microphone problem. Ok, to my esteemed colleagues on the Board, do you have any questions about this for staff or discussion about this among ourselves?

Sorensen: I guess I have a question. The applicant was offered the option of rezoning and was there a reason they didn't want to rezone or what is the logic behind that?

Nester Jelen: Is that a question for staff?

Sorensen: I will ask you, yes. Sorry.

Nester Jelen: No, that's ok. I am not 100 percent sure Vicky but it may have been just a time, a question of how long it takes to do an appeal versus a rezone. The appeal is really a separate process. It is not like getting a variance. It is a very different procedure. So, a rezone is really the proper way to go for meeting the zoning requirements.

Sorensen: Ok, thank you.

Clements: Ok and did we have...

Nester Jelen: I see a phone number that may be calling in. Tech Services if you could unmute that number. Thank you and then it is *6 on the phone.

SUPPORTERS – ADR-22-1 – Loesch Rd. Appeal

Burnworth: Can you hear me?

Clements: Yes, Mr. Dave. If you please state your name and raise your right hand and swear to tell the truth, the whole truth and nothing but the truth we would be grateful.

Burt: Dave Burnworth. I swear to tell the truth, the whole truth and nothing but the truth and I apologize for the barriers to logging into the zoom meeting.

Clements: Thank you for your patience and we apologize too that it was difficult but we got some things done while we worked it out.

Burnworth: Yeah, I heard that.

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Clements: So, if you would be so kind as to share with us your thoughts.

Burnworth: I just noticed on the GIS map how much industry and other industrial uses are in that area and I think this is worthy of a rezone myself because Young Trucking does a heck of a lot of business in Bloomington and Monroe County and the surrounding counties. I think they need to be treated fairly in this. But I understand they could have requested a different classification and everything but I would like to take some load off of them if you would just allowing them to have this property used as they desired.

Clements: Thank you. Those are good insights and we appreciate you sharing your opinion with us. I am going to bring it back them to the Board. I have a procedural question to Jackie. Should we hear a rebuttal from Ms. Moss, Jackie or Dave?

Schilling: Yes.

Clements: Traditionally yes. So, Ms. Moss let's hear your thoughts since your hand is raised.

PETITIONER REBUTTAL – ADR-22-1 – Loesch Rd. Appeal

Moss: Yes. So, what I would like to say there were a couple of things that were brought up, one was the question of why we did not pursue the rezone. Frankly, the rezone is a much more complex and time consuming matter. I have been in rezones that take 6 months to get through all of the hoops and hurdles and this is a project that they are wanting to get started on this summer and be able to get rolling on. The second is the fact that we were really taken aback by the fact that it wasn't an approved use since this conversation had already happened a few years ago and as I stated we honestly wouldn't have been submitting a Use Determination if I had realized that one had already been completed. Although I understand Jackie and Larry's point on that Use Determination also listed Trucking Terminal, it listed Trucking Terminal as a sub-use under the Business Industrial Center. The Business Industrial Center would have been the use and that is why it was not requiring a rezone at that point in time. The way that Use Determination was written the next step was going forward with site plan approval, which is a conversation Greg had had with Carly at that point in time. There had been no discussion of going through the rezone process at that point. That is why we are taking this appeal process because we were really taken aback by that. As far as with respect to the other property honestly Use Determinations up until here recently had been kind of hit and miss in formalities at times and wouldn't appeal, there was no need to appeal the use because it was approved use. So it was like a red flag to my client at the time. I was not involved with the Use Determination on that project but it wasn't a red flag. It wasn't an issue and so it wasn't pursued. I remember having the conversation with him at that time of Trucking Terminal, yeah that is what they told me it was. But in the uses I needed anyways were allowed it is not a big deal why would you fight something unnecessarily is essentially kind of where that fell. It was not that we were agreeing with that use at that time. Lastly, I wanted to bring up the concept of the General Contractor. Building Trade Shops I believe references, see one of the uses in 802 under the sorry, I am orienting myself over here, under Manufacture, Mining, Construction, and Industrial Uses, one of the use descriptions is a General Contractor. If I pull this up, the General Contractor is a permitted use in both the Light Industrial and Heavy Industrial. This particular property fall under the 833 guidelines but those do reference some of the 802 definitions and your

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definition for General Contractor is an individual who contracts to perform work or to provide supplies on a large scale or an individual who contracts to erect buildings and that is pretty much the exact definition of what Young Trucking does. Again, they are not just shipping things. They are not hauling freight everywhere. They are providing a service via their trucks and their equipment and their contracting capabilities for construction projects, erecting buildings and large scale supplying of dirt material in many instances.

Clements: Ok. Well, thank you for your explanation and your further elaboration and rebuttal. We appreciate the time and attention you gave to that. I would like to turn it back to the Board then for further discussion. This is a tough one.

FURTHER QUESTIONS FOR STAFF *or* PETITIONER– ADR-22-1 – Loesch Rd. Appeal

Sorensen: I have another question.

Clements: Yes.

Sorensen: Ms. Moss, where the address they are currently operating at can they continue the business there until this could be rezoned to the new address?

Clements: Ms. Moss?

Moss: I am going to defer that question to my client. I believe Greg is on and watching. Greg, could you chime in on that particular one?

Clements: Mr. Greg if you are here could you please state your name, raise your right hand and swear to tell the truth, the whole truth and nothing but the truth?

Nester Jelen: Greg, you will have to unmute. Greg if you are looking at the zoom screen I am going to press ask to unmute. It should pop up and say unmute.

Clements: You have to click on that.

Nester Jelen: Or you can I believe hold do the space bar.

Clements: Oh, fancy. I didn't know that. Are you able to unmute?

Nester Jelen: Tech Services is there anything we can do for Greg?

Tech Services: Not on our end.

Clements: So, it is press the unmute, the space bar or *6 if you are calling in on a telephone.

Nester Jelen: I can put the number back up on the screen. Greg is you have other buttons to press, is the alt, a- l- t- button and the "a" button at least if you are on a pc.

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Moss: He is going to try calling in Jackie.

Nester Jelen: Ok. I don't have any more tricks.

Clements: You have a lot of tricks up your sleeve Jackie. Now I know who to ask technical questions too.

Nester Jelen: It is google. While Greg calls in are there any other questions that the Board has?

Clements: Well, I have one and that is, is there any kind of from your perspective any other kind of policy kind of design, can we create without disaffirming the Director's determination could we allow like a Use Variance until they get it rezoned or is that just too tricky? Because we don't know if the rezone would work. It is import I think if the property is going to be used that way that it zoned properly, you know, and I know that sometimes the public doesn't understand that is really our purpose here is to make sure that zones are in line with the goals for the community. But we also recognize I think the importance of continuity of business and the burden that this might place on a valuable community commercial interest. So, we would like, I wonder if you have an ideas how we could have a win/win?

Nester Jelen: I do see that I believe Greg is on the line now and I would maybe defer to Dave about questions on a Use Variance since we are in an Appeal Request and I don't think that the BZA can act on anything other than the appeal tonight.

Clements: I see. Ok. So, Mr. Greg, if you would please state your name and raise your right hand and swear to tell the truth, the whole truth and nothing but the truth.

Nester Jelen: This time it will be *6, right Margaret to unmute on the phone?

Clements: Yes. *6 on the telephone.

Young: Ok. Can you hear me?

Clements: Yes, welcome.

Young: Awesome. My name is Gregory Ross Young and I swear to tell the truth, the whole truth and nothing but the truth, so help me God.

Clements: Thank you, Mr. Young. That is nice. Thanks for all of the effort that you made to speak with is tonight. So, we are anxious to hear from you.

Young: Well, I want to thank everybody for their time this evening in reviewing our request. As you know, this started 4 years ago. I sat down with Carly Peterson in her office and explained to her not only this property but some other properties that I was looking at, at the time. I told her my exact plans, what our company was all about and it is no different today than it was 4 years ago. We had done a Use Determination. I had forgotten all about it until I seen it in this packet to be honest with you and so they approved it as a General Contractor/Trucking Terminal Business

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Center if I remember right. The type of work we do is a little different than my competitors that you spelled out here in the agenda tonight. We, for the most part, we own every load that we haul. I buy and resell materials. I-69 for instance, every bit of that rock down through there except for about one phase from 321 to Bloomington was rock that Young Trucking sold. We do a lot of contracting work. I am just a little different. I am not just a dump trucker. We do a lot of different things and I have approved waste sites. We have approved borrow sites that we feed INDOT projects with and we dump project continually from IU, City of Bloomington and Monroe County and all of the surrounding counties. We are so excited about getting a shop. My 2 boys work their butt off and they have nothing but a dump to work in for the most part so this is a big deal to Greg. We are a little different than a Trucking Terminal. Kehe operates a Trucking Terminal right next door to us and they have got the same zoning. I don't quite understand how that works. But that is a Trucking Terminal if you want to see a Trucking Terminal. But I will be glad to take any questions.

Clements: Do members of the Board have any questions for Mr. Young?

Sorensen: Margaret, I have a question for Mr. Young. This is Vicky Sorensen and I have a question. Just so I am clear on which address you are talking about when you said you started 4 years ago. Was that for the address that you wanting to have rezoned or which address are you talking about?

Young: That is the address at 1238 North Loesch Road.

Sorensen: Ok, thank you. I just wanted that to be clear which address you were talking about. Thank you.

Young: Yes, same address.

Clements: Thank you Mr. Young and thank you Ms. Sorensen. Well, I bring it back to the Board for discussion and a possible motion. I myself feel convinced by Mr. Young's statements that the Use Determination was done with the help of the Planning Staff 4 years ago, that they are doing the same thing that they had been doing all of this time and they really don't need any hiccups in their operations and I would like to, even though we don't like to overturn the Use Determinations by our Director, to me it seems like this is maybe even a better solution than a rezone. Because the rezone could open should the property change hands other operations that we may or may not want there. So, I feel that this might be a more eloquent solution but I am anxious to hear from my colleague, Ms. Owens.

BOARD ACTION – ADR-22-1 – Loesch Rd. Appeal

Owens: Thank you ma'am. The discussion that I just heard is that this has been going on for 4 years. Why has it taken so long to get to this point?

Moss: I can speak to that a little bit. When Greg originally met with Carly 4 years ago he was looking at purchasing property and he has several properties he was looking at. He talked to about all of them. What Greg didn't recall and what I was unaware of was that actually did use

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determinations for at least this one and the one on the south side of town. But I was not aware those were formal determinations like I said or we wouldn't have even gone through this process but now we have a second determination on the same property for the same use. So he was looking at multiple properties and it has now come back to this is the one we are moving forward with. The property has just recently been purchased. I believe that was purchased in the summer, correct, Greg, this past summer with the intent to go right into site design and we have hit this hiccup, unexpectedly.

Owens: Thank you very much. So, having heard all, and read all of the evidence it seems to me that it would be to the petitioners benefit to get this properly zoned so that there is never any questions future. This is a new use for this property. It is not an existing use. So, in order to get it all legal and all right and I am sorry it has taken so much time, I think that we should uphold the Director's Determination and suggest a rezone and a lot of work has already been done so it is not hopefully going to take as long as what a brand new petition would. Everybody on the Planning Staff is familiar with this particular issue so I think it should go forward fairly quickly. Thank you.

Clements: Thank you, Ms. Owens.

Sorensen: I think I will chime in one more thing because I don't feel like I got my answer on. If they can continue operation at their current address why this process goes forward to be rezoned then we are not disrupted their business and I agree with Dee that it would be good to have everything legally laid out instead of piecing it together and then we get another variance coming in, so I just think we should move forward for rezoning, asking for an appeal for rezoning.

Clements: Is that a motion? Or can you make a motion?

Sorensen: I can make a motion. **In case ADR-22-1, for 1238 North Loesch Road, Appeal of Director's Interpretation of Proposed Use at, I move that they move forward for a variance on rezoning at this address.**

Owens: Could I make a **friendly amendment** to that Vicky?

Sorensen: Sure.

Owens: I think that I heard Dave say that we are only allowed to vote the appeal up or down and the rezone would be later as did Planning Staff. So, could **I suggest that we just that the motion says that you want to uphold the appeal**, etcetera? Does that work?

Clements: Could I say something else here? Under General Powers and Duties, it says Item B; we may reverse or affirm, wholly or partially, or may modify any order, requirement, decision or determination appealed from as in its opinion ought to be in done in the premises and to that end shall the powers vested in the person or board from whom the appeal is taken. So, that just in case there are any modifications that you would like to make to your motion just as far as the determination is concerned. I just wanted to make sure that you were aware of that on this appeal.

Sorensen: I appreciate that Margaret. I guess this is a kind of difficult motion and I want to make

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sure the wording is correct. I don't know if I am allowed to ask Mr. Schilling on the wording.

Schilling: Yes, I would be happy to assist you on that. I guess if your motion is affirm the Director's decision that should be your motion. If you want to suggest or recommend that they continue with a rezone, that is fine as well but the meat of the motion should address the Director's decision.

Sorensen: Ok, thank you. So, I will go again with a motion. **I move to affirm, to approve and affirm the Administrator's Determination.** Am I allowed to put a recommendation here?

Clements: Yes.

Sorensen: **With a recommendation that Young Trucking pursue a variance on rezoning for the new property.**

Owens: I will **second** that.

Nester Jelen: Ok, the motion has been moved and seconded to affirm the Administrator's Determination in case ADR-22-1. I can go ahead and call the roll. Vicky Sorensen?

Sorensen: Yes.

Nester Jelen: Margaret Clements?

Clements: I am going to vote yes but I want to make a statement that I voting yes because this will be the most expeditious route now for Young Trucking to get their desired outcome achieved. So, I am sorry that we have bureaucratic process but we do appreciate you in our community and we look forward to seeing you at the Plan Commission or elsewhere for the rezone. But I wanted to thank them for all of the effort and all of the good work they do in our community.

Nester Jelen: Dee Owens?

Owens: I will second that and say yes.

Nester Jelen: The Administrator's Determination was affirmed 3 to 0.

The motion in case ADR-22-1, Appeal of Director's Interpretation of Proposed Use at 1238 N Loesch RD, in favor of affirming the Administrator's Determination, carried unanimously (3-0).

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REPORTS:

Clements: Well, if no one objects, I think I would like to move that we leave the meeting and adjourn.

Planning/Nester Jelen: I will say just real quickly, Vicky is this your last meeting with us?

Sorensen: It is.

Nester Jelen: We want to thank you, Vicky for your service. We really appreciate having you on the Board of Zoning Appeals and you will definitely be missed.

Sorensen: Thank you. I have learned a lot from all of you, so thank you.

Clements: We appreciate your insights and your good questions. Thank you so much. I am going to miss you. I wish we had had this time in person because it is all just virtual but thank you for all that you do.

Sorensen: Thank you.

Owens: Thank you Vicky and I second Margaret Clements motion to adjourn.

Clements: Have a good night and thank you everyone.

Nester Jelen: Thank you. Bye, bye.

Clements: Bye.

Legal/Schilling: No reports.

The meeting adjourned at 7:04 P.M.

Sign:

Attest:

Mary Beth Kaczmarczyk, Chairman

Secretary, Jackie Nester Jelen

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