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**BOARD OF ZONING APPEALS  
Regular Meeting Minutes  
July 5, 2018 - 6:00 p.m.**

**CALL TO ORDER**

**ROLL CALL**

**INTRODUCTION OF EVIDENCE**

**APPROVAL OF AGENDA**

**APPROVAL OF MINUTES**

May 2, 2018

June 6, 2018

**CALL TO ORDER: Peter Kaczmarczyk, Chairman, called the meeting to order at 6:00 PM.**

**ROLL CALL: Peter Kaczmarczyk, Margaret Clements, Mark Kruzan**

***ABSENT: Susie Johnson, Michael McNeil***

**STAFF PRESENT: Larry Wilson, Director, Tammy Behrman, Planner/GIS Specialist, Jackie Nester, Planner I, Jordan Yanke, Planner/GIS Specialist**

**OTHERS PRESENT: David Schilling, Legal**

**INTRODUCTION OF EVIDENCE:**

**Larry Wilson introduced the following items into evidence:**

Monroe County Comprehensive Land Use Plan (as adopted and amended)

Monroe County Zoning Ordinance (as adopted and amended)

Monroe County Subdivision Control Ordinance (as adopted and amended)

Board of Zoning Appeals Rules of Procedure (as adopted and amended)

Cases advertised and scheduled for hearing on tonight's agenda

**The motion to approve the introduction of evidence carried unanimously.**

**APPROVAL OF AGENDA:**

**Motion to approve the agenda carried unanimously.**

**APPROVAL OF MINUTES:**

**Motion to continue approval of May 2, 2018 minutes, due to lack of quorum, carried unanimously.**

**Motion to continue approval of June 6, 2018 minutes, due to lack of quorum, carried unanimously.**

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**OLD BUSINESS:** None.

**NEW BUSINESS:**

**1. 1805-VAR-14 Schopp Conditions for Tourist Home Variance to Chapter 802**  
One (1) 5.22 +/- acre parcel in Clear Creek Township, Section 21 at 9521 S Strain Ridge Rd. **Zoned AG/RR/ECO1.**

**2. 1805-VAR-17 Brown Stansifer Minimum Lot Size Variance to Chapter 804**  
One (1) 0.50 +/- acre parcel in Van Buren Township, Section 24 at 4854 S Stansifer Ln. **Zoned ER.**

**3. 1806-VAR-18 Lee Minimum Lot Size Variance to Chapter 804**  
**4. 1806-VAR-19 Lee Minimum Lot Width Variance to Chapter 804**  
One (1) 1.09 +/- acre parcel in Bean Blossom Township, Section 36 at 3744 W Delap Rd. **Zoned AG/RR.**

**5. 1806-CDU-04 I-69 Towers II, LLC Conditional Use for Wireless Communications Facility (WCF), Chapter 813**  
One (1) 9.85 +/- acre parcel in Indian Creek Township, Section 3 at 7430 S Harmony Rd. **Zoned AG/RR.**  
**\*\*CONTINUED BY PETITIONER\*\***

**REPORTS:**

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

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**NEW BUSINESS**

**1. 1805-VAR-14 Schopp Conditions for Tourist Home Variance to Chapter 802**

One (1) 5.22 +/- acre parcel in Clear Creek Township, Section 21 at 9521 S Strain Ridge Rd. **Zoned AG/RR/ECO1.**

**BOARD ACTION:** Kaczmarczyk introduced the petition.

**STAFF ACTION:**

Yanke: Thanks, Peter. As you mentioned, there is a variance to Conditions in Chapter 802 of County Zoning Ordinance for a Tourist Home. It is a one, 5.22 acre parcel located in Clear Creek Township. It is located at 9521 South Strain Ridge Road. The zoning is Agricultural/Rural Reserve and it's located in the Environmental Constraints Overlay Area. Here is a location map. It is south of Bloomington. As you see South Strain Ridge Road goes in toward that Monroe Dam Road off of 37. The Comprehensive Plan has it as Rural Residential as are the adjacent properties. The zoning, again, its Agricultural/Rural Reserve. It is also located in the Environmental Constraints Overlay Area 1. Some of the adjacent properties are zoned Suburban Residential and the other adjacent properties are the same, Agricultural/Rural Reserve. Here are a couple of site conditions maps and I can get back to the one on the bottom right, later when we are discussing the actual variance at hand. On the left you can see the highlighted parcel. It is mostly flat as you get towards the lake of course there is some slope. The structure is existing, however. Then the one on the bottom right is just a rendering of a proposed Tourist Home based on this variance request and how close it is to the adjoining principal structure, which is a single-family residence. It is approximately 130', which the petitioner's representative pointed out and so did the GIS. It's about 130. Here is a slope map. As you can see it's built out. There is no future development proposed at this time. The structure is existing and it's actually mostly under the 15 and 12 percent slope thresholds until you get toward the lake. Some photos here. You see South Strain Ridge Road on the left looking north and south at one of the driveway entrances. There are actually 2 driveway entrances, one to the north and one to the south. The one on the left, here are photos from the southern driveway entrance. The photo on the right is just the approach to the property. Here are some other photos with the actual structure in question on the bottom left and bottom right, and the top right, actually, looking toward the lake. The one on the top left is the driveway approach, the northern driveway entrance off of Strain Ridge Road. I will say on the bottom right that is looking kind of from an elevated area toward where I would be standing toward the adjoining property to the south. It is not quite toward the property line all the way but kind of. The one left, it is hard to see, but that is the Principal Use Structure as a single-family residence in question, which is the driving factor around this variance and that is on the left hand side and that is looking south from the structure in question. On the right is the aerial view with the green box highlighting the proposed Tourist Home or Cabin and the 2 red circles are where the driveway cuts are currently serving the property. Here is the petitioner submitted site plan. Petitioner also put in the letter roughly 130' feet. The requirement is that a Tourist Home must be 200' feet from an adjoining Principal Use Structure, so it's a 70 foot encroachment on that. We can discuss further once I get through this recommendation. Based on the report and the findings, the recommended motion is to deny the Design Standards Variance to Chapter 802, Condition 48 for the Setback noted. It is Condition B also in the report, based on the findings of fact and staff can take questions right now from the Board and I do believe there are people here to speak on it.

**RECOMMENDED MOTIONS**

Deny the design standards variance to Chapter 802 Condition No. 48 (Setback for *Tourist Home or Cabin*) based on the findings of fact.

**FINDINGS OF FACT: Setback for a *Tourist Home or Cabin* Variance**

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

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

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

**Findings:**

- Approval of the variance would allow the petitioner to apply for an Improvement Location Permit to utilize an existing structure as a *Tourist Home of Cabin*, with a 130’ setback distance to the adjoining southern property’s principle use structure;
- The petition site is zoned Agriculture/Rural Reserve (AG/RR) and is located within the Environmental Constraints Overlay Area 1 (ECO1), with a non-residential side yard setback requirement of 50’ from the side property line;
- According to ordinance requirements, the proposed *Tourist Home or Cabin* shall be located no closer than two hundred (200’) feet from any adjoining property’s principal use structure not currently being used as a *Tourist Home or Cabin*;
- The property to the south contains a principal use structure being used as a single family dwelling;
- The petition site currently contains two structures, dating back to 1968 and 1969: a single family dwelling and a detached garage;
- Access to the property is derived from S Strain Ridge Road, a designated Major Collector;
- No future development of the petition site is proposed at this time;
- The petition site is not located in FEMA Floodplain;
- There are no known karst areas;
- Conclusion: It would not impair the stability of a natural or scenic area;

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

**Findings:**

- See Findings under Section A(1);
- No changes to road access, utilities, or existing private sewage disposal system are proposed by the petitioner with this variance request;
- Conclusion: It would not interfere with or make more dangerous, difficult, or costly, the use, installation, or maintenance of existing or planned transportation and utility facilities;

*(3) The character of the property included in the variance would not be altered in a*

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

**Findings:**

- See Findings under Section A(1) and A(2);
- Surrounding properties are zoned Agriculture/Rural Reserve (AG/RR) and Suburban Residential (SR);
- The existing location of the structure in question would meet all other density, bulk, setback and area standards for a *Tourist Home or Cabin*;
- The 5.22 +/- acre parcel is a legal lot of record and is not platted;
- The proposed use of the petition site is *Tourist Home or Cabin*;
- *Tourist Home or Cabin* is defined as a building, or portion thereof, in which four (4) or fewer guest rooms are furnished to the public under the terms of a short-term lodging agreement;
- The adjoining and surrounding uses appear to be primarily single family dwellings;
- Conclusion: The character of the property included in the variance would not be altered in a manner that substantially departs from the characteristics sought to be achieved and maintained within the relevant zoning district;

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

**Findings:**

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

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

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

**Findings:**

- See Findings under Section A;
- *Tourist Home or Cabin* is a permitted use in the Agriculture/Rural Reserve (AG/RR) zoning district, provided Chapter 802 Condition No. 48 is satisfied;
- The distance of the proposed *Tourist Home or Cabin* is approximately 130' from the adjoining property's principal use structure, meaning a 70' encroachment on the setback requirement;
- *Tourist Home or Cabin* setback requirements ensure that neighboring property's principal use structures are 200' from a *Tourist Home or Cabin*, and that the comfort, convenience,

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use, and value of adjoining property owners are not impacted by *Tourist Home or Cabin* operations;

- Due to the fact this variance request is complaint/enforcement driven by the Planning Department, it is evident the *Tourist Home or Cabin* operation at the petition site does not satisfy the purposes of the setback standard of 200' described in the previous bullet point;
- Conclusion: The specific purposes of the design standard sought to be varied would be not satisfied;

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

**Findings:**

- See Findings under Section A and B(1);
- No future development of the petition site is proposed at this time;
- There is no FEMA floodplain on the petition site and no apparent karst features;
- Based on previous enforcement and research pertaining to the *Tourist Home or Cabin* on the petition site, it is evident there are adverse impacts on the surrounding properties associated with the use;
- Conclusion: It would promote conditions detrimental to the use and enjoyment of other properties in the area

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

**Findings:**

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

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

**Findings:**

- If the variance request is approved, the petitioner is required to meet all other Improvement Location Permit (ILP) requirements and design standards for a *Tourist Home or Cabin*;
- Application of the 200' setback requirement for a *Tourist Home or Cabin* is a standard applied to all *Tourist Home or Cabin* uses;
- There are no practical difficulties in the use of the property, as the zoning permits the parcel and existing structure in question to be used as a single family residence;
- The petitioner started the use of a *Tourist Home or Cabin* without proper approvals and cannot claim practical difficulties due to an ordinance change. Any "practical difficulty"

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- claimed by the petitioner or representative is self-inflicted;
- Conclusion: Practical difficulties have not been established.

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

### QUESTIONS FOR STAFF –1805-VAR-14 – Schopp

Kaczmarczyk: My main question is the neighbor property, the residential house that it is under 130 feet from. It appears to me to be very close to the property line. So, my question is, is it in the setback? Is it appropriately placed or does it have variances and does any of that matter, legally in terms of making a decision?

Yanke: The structure from what I can tell and I think that the petitioner's representative also put it in the letter, I think it is roughly 20 feet from the property line and the setback for a residential structure is 15 feet in that zone. Actually, let me go back and check the zoning to make sure. My apologies. It is actually zoned SR, so the side setback is 5 feet for a residential structure in that zoning district. But I don't think that that weighs in our decision as well. The fact of the matter is that it's within that 130 feet which is over one third of an encroachment on standard of the 200 foot setback.

Kaczmarczyk: So, the neighbor is in compliance and it wouldn't matter even if it wasn't.

Yanke: Yes, from what I can tell.

Kaczmarczyk: Ok, thank you. That was my only question for now. Any other questions?

Clements: My question would pertain to whether or not, well, I guess when the buyer who bought the home in 2007 when they purchased it, did they intend that they would be able to use it as a Tourist Home?

Yanke: I don't know that answer actually. I would probably rely on the owner or the petitioner's representative speaking on that. But yes, they bought it in 2007, so you are right, that is a good question. But I don't know if I have a good answer.

Clements: And the fence that we saw in the photograph is that between the proposed Tourist Home and Suburban Residential home?

Yanke: Yes, the fence is actually, from my understanding, it is closer to the adjoining Principle Use Structure. But to answer your question, yes it is between the 2 structures.

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Clements: I think my final question and I guess I can't ask that until any of the people stand up is to me it seems primarily an issue of noise, not the use as a Tourist property. So, that is something that I would like to discern as we hear more.

Yanke: Yeah, and I think that that setback standards definitely speaks to noise and the adverse impacts that may be attributed to a use such as this, which is commercial actually.

Clements: Ok, great. Thank you.

Wilson: And I will comment on prior cases where this issue has come up in talking to members of the Plan Commission at the time the ordinance was passed, a couple of issues, privacy was one. There were issues with just wanting to separate families from activities that might be going on at the time. That is one of the reasons. But it doesn't really say in the ordinance exactly why the reasons but I think privacy, noise, those kinds of things.

Clements: Ok, great. Thank you.

Kruzan: If I could, could you go back to the one you had before this? It's the one that says Proposed Tourist Home or Cabin in the red outline. Yeah, on the one on the right, just so I understand where all of this is. I don't know if it's a boat or a vehicle, or whatever that is, the red and white on the lower left and then the next structure over, is that, what is that structure? It's a garage, is that what that is?

Yanke: The one closest to the red and white boat?

Kruzan: Yes.

Yanke: It is my understanding that that is an accessory structure on the property. Not a single-family dwelling.

Kruzan: And where it does say Proposed Tourist that is literally what that would be. That is the proposal.

Yanke: Yes, in the black line I tried to do the best to go to the edge of edge.

Kruzan: Right, and that is 130 feet between the adjoining properties. Just so I can put it into prospective in terms of the law, if this structure, the one that is being proposed was, I don't know, north, if this was built closer to the other property line so that it made it 200 feet, would it be allowed? If this structure was torn down or half of it was torn down and added onto or a new structure was built closer to the other property line, farthest way, yeah, farthest away from the adjoining property principal use, would it be ok? I know it's a very theoretical...

Yanke: Yeah, it would be. As long as its 200 feet from the structure that I am highlighting it would be ok in that standpoint. But I can't guarantee because I didn't do the study, if you move it north, it wouldn't encroach on...

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Kruzan: Yeah, right, if it's too close to that, right, to that property line. If it was moved, what I would assume is east, toward the water and up and over, I mean, there is a way to put another Tourist Home on this if it falls 200 feet away from the adjoining property Principal Use and not too close to any one of the other boundaries or watershed or whatever else might be there, it would be allowable.

Yanke: Yes, because from my understanding the petitioners have only asked for that setback so they would be meeting all of the other criteria for a Tourist Home or Cabin. So if they meet the 200 feet they would be permitted in that zone.

Kruzan: Whole different expenses and all of that, I just want to understand the law. The final question is and know we all have to come up with a number. Why is it 200? Not knowing the history of this or the city or any of the numbers we come up with sometimes, is it arbitrary or was it something that there was some magic to 200?

Yanke: Do you want to try to answer that?

Wilson: I am not sure exactly the reasons. I know there were issues in regard to parties going on and families being exposed to activities of parties.

Kruzan: A number had to be selected.

Wilson: Yeah and that maybe, again, I don't know why 200 exactly but I know that was one of the issues as well as noise.

Kruzan: I don't mean this to be dismissive of anyone who is part of this but it is kind of a matter of, it is what it is, at this point and that is what a BZA exists for, to look at this and decide whether or not a variance is appropriate in a given situation.

Wilson: I think Dave may want to, there is a certain argument that the Plan Commission and the Commissioners had when they established this they did it for a valid reason.

Kruzan: Is a valid reason that we had to pick a number and we went with a number that is 200?

Schilling: It could have been that, I don't recall. But that is the Minimum Lot Width for a lot of the zones where you would find tourist homes. That may have been that they wanted a lot separation.

Kruzan: David, when you say that you mean in other jurisdictions or in Monroe County?

Schilling: In Monroe County where there is Agricultural/Rural Reserve, Forest Reserve and Conservation.

Kruzan: Do we have any idea how this compares to other, excuse me, other jurisdictions?

Schilling: Brown County has a 250 foot and then a quarter of a mile between tourist homes.

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Kruzan: I can't believe you knew that. But that is good. Thank you very much.

Wilson: Ask him anything about Brown County.

Kaczmarczyk: Any other questions for staff?

Clements: I am just a little confused because the findings of fact I see here are different than the ones that I received in the packet.

Kaczmarczyk: Yeah, what those are Mr. Carmin distributed those and those are alternative findings of fact that he is recommending that we could use and he will explain this I would expect, should we choose to approve. He did our leg work for us.

Clements: I see. But the Tourist Home was built 1969 or 2002?

Kaczmarczyk: 1968. It says in the packet.

Clements: Ok, that is what I needed to know. Thank you.

Kaczmarczyk: No other questions for staff? In which case, would the petitioner or the petitioner's representative like to address the Board?

**PETITIONER/PETITIONER'S REPRESENTATIVE – 1805-VAR-14 – Schopp**

Carmin: My name is Mike Carmin, representing the petitioner. The petitioner is Curtis Schopp. With me here tonight is Victoria Schopp, the spouse. I do want to, often at these BZA meetings time is not a problem and I am not expecting it to me one tonight but I do want to make sure we officially reserved a couple minutes for possible rebuttal. Because I know there are some people that are anticipating on speaking tonight. So I want to make sure that I have that opportunity to readdress it depending on what might be said. So, your question. It is a little bit confusing. There has for a long time been a mobile home out there on the property, it goes back years. The Kellam's owned this lot. They also owned an adjacent lot. I am not sure who broke it up into these odd configurations. You see the line between the yellow and the red, that is actually a long, narrow strip of the lot that is just to the west of this and it's a flagpole lot in reserve. Usually we get the long, road front narrow road frontage with the lot widening at the back, this lot is widened at the front, this adjacent lot, and has a long narrow strip getting back to the lake. It is kind of reverse of what you usually see on those types of things. I don't recall now who did that. I know the Kellam's family owned both those lots and acquired them separately back in '87 and '89. So the lot configurations have been in existence for quite some time. They are rather narrow lots and deep. Some of them are wider than others as you saw in some of the other photographs. In regard to your question about the setback issue, scouted off using the measuring tool in GIS, which is relatively accurate, it's not precise, it is not what a surveyor would do, Mrs. Schopp has tried to do it more manually, and it's probably close to 136 feet. But frankly, the distance between 103 feet and 136 feet, I assume you are going to find to not be significant in terms of that fact, what you do with it. It is also true that the Terlizzi property is the one that has the structure on it that is close to the principal use. Now, there is an ordinance issue of what is an adjoining lot, what is an adjacent lot?

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Are those terms interchangeable or not? Because the ordinance uses one term. There is an intervening lot. If you say adjoining means it has to be literally touching it, it doesn't. Because there is this intervening legal lot that we didn't create it was already there. I can tell you having to argue this or debate it, however you want to look at that, with David and maybe indirectly Planning, are those interchangeable terms? Does adjoining also mean adjacent? Because their court case says adjacent means within close proximity, not physically touching or else it has to be. That is a quagmire that we are not going to resolve here tonight and we are not attempting to. I am just offering that to say that this ordinance is probably in my limited experience with this, the least understood and most frequently disregarded ordinance of any that we have going in terms of what people are doing with their properties. Because they can watch news articles and stories and listen to be people talking and we are doing Airbnb's all over the place, I mean, Bloomington doesn't even attempt to regulate now. They started at one time and they pulled it back and make no attempt to regulate it. The state weighed in on it but it doesn't not affect the county's ordinance because it's pre-existing. It does not affect the Brown County ordinance. They actually have had a tourist cabin ordinance for quite a bit longer than even Monroe County had theirs. David knows because he has been a longtime adviser to the Brown County Plan Commission. That is why he is able to rattle off answers to your questions earlier. He is well versed in it. But coming back to the merits on this one, what are we talking about the Tourist Cabin use? It's a residential use. It's a part-time residential use. It is seasonal in terms of access to water. We don't get a whole lot of demand for these types of uses and the water and about a quarter of the year with weather conditions being what they are. It's not an everyday use. If we are talking about noise and levels of activity in the neighborhood a fulltime residential use there would be far greater than this. This is a small structure, very limited on what how many occupants you can even have in it as a tourist. The ordinance very well limits that given the size of the property. So, it is a pretty minor use as far as that goes. It is hard to address these things. The staff makes recommendations and they draw conclusions, that's in your staff report. What you asked about earlier, Ms. Clements, just so I didn't have to walk up and do it now, I took those up earlier so they would already be up there and we would get to them now. If you look at the staff recommendation and the findings, there are 3 principal findings that are labeled A, B, C and under each of those there are kind of sub-finding issues. Under A there are 4 sub-findings and we have no dispute with those. We can adopt the staff findings under part A as they are verbatim. When you get to part B, you get to sub-finding number 1, I put it out there verbatim, there is the conclusion and one finding that we believe the evidence would support that those would be not approved and be struck. I suggest what I think the evidence suggests what additional finding could be made under that number one and that is the way that what you have that I submitted lays out. We are suggesting striking from the staff report proposed finding and conclusion in 3 places and offering additional findings to be made under those categories that are of course designed to allow you to find the necessary findings and support approval. Just additional facts if you your question that was being asked earlier, how do we measure this? I call it corner to corner. You can call it structure to structure, I think is actually what it is. It's from the closest point to the closest point, which in these properties or homes are situated really are corner to corner. That does not measure 200 feet. There is no question about that. That is why we are asking for the variance. If you are looking at the practical effect of separation and distance, if you look at door to door, entry door to both structures, its well over 200 feet. So, where did 200 feet come from? As far as I know, it's just a number. Somebody thought that was a good separation point and it got approved. Nothing empirical about it. Why do we measure from closet point to closet point? Because somebody thought that was a good way to measure it. At the north

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end the closest point is a garage. Does that have the same significance if it was a bedroom? There is a lot of arbitrariness in that. But it is the ordinance. We are stuck with it. It is what it is., I think was the phrase earlier and that is true. We have to deal with what it is. But when you look at the history of these a lot of these are long time existing lots as they are with existing structures on them as they are. We can't really change that. This whole ordinance issue came in well after the fact of these when Mrs. Schopp may talk and certainly depending on what questions there are, she may need to, but when the property was acquired it was acquired for this in mind. There have been uses in this trailer by them that were not regulated. They live just down the road from this, probably a couple lots over is their home and they have a number of guests and friends who want access to the lake at no cost, not a rental, just basically as far as they are concerned it's an extension of the home. Come on down and share the lake with us. So there have been people coming and going, yes. That was not an Airbnb use that was not a Tourist Cabin use, not a rental, not for profit, not for anything other than sharing your property with friends on occasion. As far as we are concerned the Airbnb type use it's just a name but we all know it by that, it's just a reference point, is not change of use of what has been going on. It is a relatively quiet use and certainly compared to a fulltime residential use it would pale in comparison. These properties have been existing for a long time, noted in the proposed findings since at least '87 and probably older than that but I can date that from the records that the Kellam family bought adjacent lots at different times. They had to exist before then as single legal lots. The residential structure has set in place since at least 2002 and I took that number from a spike in taxes that showed up in 2002. But that could be for some other reason. The mobile home goes back many years before that and there is the garage and there have been some improvements to the property but like I said the structure has been there been a long time coming. It is true, I have not made it a finding, but it is true as being asked earlier there are other places that had the structure been just happenstance to have been located a little bit differently than what it is now then we wouldn't even be here talking about it. The ordinance didn't exist at the time. There wasn't a need to that. It's simple. On this property that structure, the residential structure is pretty well central located on the lot, as you can see. Equal distance from each side, each property line. The Terlizzi home, the one that is within the 200 feet is a nice house. I don't know if you had any photographs of it. It is a very nice house. It is a much larger structure and it expands pretty much within required setbacks. It is a linear structure in terms of north and south almost side property line to side property line. Nothing wrong with that it's just that the structure dominates the lot and it brings it within close proximity to the property line and when whoever chose to build the house and build it that close apparently there was not concern with residential use on the other lot and how close they were going to be to it and appropriately so. You saw the pictures. This property is built to be sheltered with trees, it sits back in there, somewhat of an isolated property. There is many of them out there in this area. This is not the only one. But when you look at the history of the property I think you can find practical difficulties. I think the lot size, the existing configuration, the structures, the age of which they have been there all a little bit different. Practical difficulties is not hardship. That is a different standard for use variances. Practical difficulties I hear some people a lot of times refer to these as well it needs to be unique. No, unique means one of a kind. That is not the legal requirement either. Practical difficulties are there are things about this lot that are a little bit different. They are on this lot but not generally on all of the lots. The lot configuration, the age and history meet that requirement and would allow you to find that practical difficulties do exist. The variance certainly allows that. I said in the proposed findings, I tried to lay them out to match the staff's findings with that. I was a little surprised that staff conclusion that under the one that the proposed finding is that it would not

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promoted conditions detrimental to use and enjoyment of other properties in the area, for example, the pond and the water interfere with the sewage, easement, stormwater facilities, natural water course, etcetera and staff said yeah, it would. I don't see that. There are no infrastructure, no buildings required, no change in driveways, no change in drainage, no changes in environmental impact at all, no tree cutting, no clearing. I mean it's a neutral impact on site conditions. It's all interior. It's changing a owner occupied residential use to a transit residential use but it is still a residential use interior with no other changes. So, I would submit that you should have no difficulty disapproving staff conclusion on that one and finding that one. If there is a fly in the ointment and there almost always is on the design standards variance it's the issue of practical difficulties. That is usually the hardest criteria to find from the evidence and I would submit that I don't want to keep repeating myself but I think that the facts are there that would find practical difficulties here that would be relieved with this variance and probably the most important issue which is not in the ordinance but is always in the back of every decision you make is this does no harm. This does no harm to anyone so finding it and approving it as I think the evidence will allow it does not engender harmful use to anybody. We ask for your support. Victoria, you are subject to questions. Do you want to add anything at this time?

Schopp: Victoria Schopp. I just wanted to address your question. I live basically next door. Now from a lot standpoint between the Tourist Home and my home there is this 3 really small lots. My house and the Tourist Home are in one fenced in area. When we purchased it we had a fulltime home and it's a sizable home. This is just a little trailer, is actually what it is. When we purchased it we had no intention of living there. It had always been used as a temporary home where the previous owners had a lake cabin kind of thing. When I purchased it I had hoped to rent it out some but it mainly I was telling attorney when you have a place on the lake you have lots of friends. So it tends to be a gathering spot. As far as noise goes I have found that some renters are more polite then your own friends. But it was never intended to be lived in it was intended to be and I knew it wasn't practical to rent it out fulltime because of the proximity to the lake and it's a trailer, who wants to live there in January. That is all that I have.

Kaczmarczyk: I have one question for you. I was just curious and you would know best. The northern driveway to the property, now it actually runs through an adjacent property. Is that correct?

Schopp: Yes. There is the 3 little slices. What we have done is there used to be a trailer you can kind of see it right in that white spot there that is actually just a concrete pad. It used to have a trailer on it. We removed the trailer and we just spruced up the area to make it like a just a gathering area. We have like a u shaped drive to get you can drive in the southern part and out the northern drive. A lot of the renters will just use the southern drive.

Kaczmarczyk: Now, the northern drive that goes through then that's a different lot but is it a lot you own?

Schopp: It is a lot that I own.

Kaczmarczyk: Does anyone outside of your ownership group also use that driveway or does it only go to your properties?

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Schopp: Only to my properties.

Kaczmarczyk: Ok, thank you. That is the only question that I have. Any other questions for Ms. Schopp or Mr. Carmin?

Clements: I just have one question and it has to do with I think I did a little bit of homework because your trailer, you call it a trailer, it has a deck and everything. Is it about 1,000 square feet? Is that about it and would you have more than 1 family there at a time usually or what would be?

Schopp: It has one very small bedroom and one master bedroom, so to speak, so it is best suited for a family with some kids.

Clements: Ok, that's what I wanted to know. Thank you.

Kaczmarczyk: Any other questions for the petitioner or the representative? Seeing none at this time. I will call for public comment. Is there anyone in the public who would like to speak in favor of this petition? Seeing none. Is there anyone in the public who would like to speak in opposition to this petition?

**SUPPORTERS – 1805-VAR-14 – Schopp: None**

**FURTHER SUPPORTERS –1805-VAR-14 – Schopp: None**

**REMONSTRATORS –1805-VAR-14 – Schopp**

Terlizzi: Jim Terlizzi. I really hadn't thought that I would talk but it seems like your comments came down to 2 issues, as did yours. One is really the amount of noise and activity there is in this house. I think you are saying now though that that would be limited to one family. Is that right?

Kaczmarczyk: I believe that is what she said. She said it's best suited for.

Terlizzi: Do you mind if I read this? Because we put this together when we trying to put some of our thoughts together.

Kaczmarczyk: Certainly.

Terlizzi: We submit this on behalf of myself and my wife, Rhoda. We agree with the department staff's findings and recommendations. Chapter 802, Condition 48-B requires a Tourist Home Cabin shall be located no closer than 200 feet from any adjoining use structure that is not currently used to it and there was a lot of discussion on how arbitrary that is or not. But I have got to think that the setback for a Tourist Cabin is a minimum and is not adjusted by arbitrary circumstances. Otherwise you would apply something to each operation and it sounds like the County went through some findings on that and come up with a logical reason and it is largely how far away we are doing noise. Now, our bedroom window, I don't think you can see it, yeah, actually its right there. That bedroom window is on the northside of our house facing 9521 South Strain Ridge Road and the terrace extends the length of the eastside of our house. So you can't see if from here because

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it's on that side. On at least one occasion, there was a loud bachelor party and we know it was a bachelor party because, pardon...yeah, and then they stopped out our house and asked for directions.

Kaczmarczyk: Sir, if you can face us while you are talking please and try to speak close to the microphone.

Terlizzi: Sorry. Approval of the variance would likely increase the number and volume of such outings and is noted in the staff report as over time such increased activity would negatively influence property values, other people as well as ours. When we purchased that land in 1989 and we subsequently built the house in 1999, we knew we were moving into a rural residential area with single-family homes virtually only. Approval of the variance would alter the character of the neighborhood and have a long-term effect on the value of our property and other local properties.

Kaczmarczyk: Thank you, sir. Is that all?

Terlizzi: Yes.

Kaczmarczyk: Thank you. Any questions from the Board for Mr. Terlizzi? Seeing none. Is there anyone else who would like to speak in opposition to this petition?

Green: Deborah Green. I own a home at 9443 South Strain Ridge Road. If you could flip the pages. Keep going, right there. The Schopps purchased the home next to me and used it as an Airbnb. I just want you to know that I have experienced a lot of traffic, a lot of parties, a lot of noise, and from my best recollection that is a 2 bedroom home, I believe and there have been people there up to many 30 people at a party, overnight. I have come in and I haven't been able to get down my driveway. There has been traffic after traffic. If you go on the Airbnb site they advertise this home as 16 plus people can rent.

Kaczmarczyk: Ok, I do want to make sure, we are talking about a different home. Correct?

Green: Yes, but I am just telling you my experience with the Airbnb rentals by the Schopps and I do have pictures if it's relevant to you.

Kaczmarczyk: I don't personally see a need for them right now but.

Clements: I would just like to know. Did you file a noise complaint when this occurred?

Green: I filed complaints with the Zoning Board and they records of it and they have pictures of the problems that I had occurred with this.

Clements: Ok.

Kaczmarczyk: Ok, staff I am just curious. This obviously isn't the house that we are discussing at the moment, is there anything relevant to this other house that you think is important here? I am not quite sure how to phrase it. Because I don't want to dismiss it but, yeah, pressing it to this case.

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Wilson: My understanding is we received a complaint and that enforcement action was taken and that they agree to cease operations at that location.

Kaczmarczyk: About how long ago was that? When was that approximately, months, years back?

Yanke: It was my understanding that it was in 2017. The case from my recollection that Mrs. Green is speaking of, to the north, was closed a few months ago. But I am not exactly for sure, when based on a letter signed by the property owner, that that use was ceased and I am only referring to the one to the north.

Clements: Did you receive more than one complaint or just one complaint that you know of?

Yanke: When I look in the file, I see one complaint form but there are letters regarding that one to the north and then also this one that is here tonight, referring to a citizen complaint. But it is hard for me not working as a Zoning Inspector to really understand how it all happened.

Clements: Right, ok, thank you.

Green: I guess my concern is for the neighborhood. We all purchased there for privacy and for nature and those things have been violated as far as I am concerned. 200 feet in my opinion is not enough to begin with.

Kaczmarczyk: Alright. Thank you. Any questions for Ms. Green? Alright, thank you very much.

Green: Thank you.

Kaczmarczyk: Is there anyone else here who would like to speak in opposition to this petition? Step right up.

Terlizzi: Rhoda Terlizzi. I am under the impression that Mrs. Schopp said that it would be 2 bedrooms, one was a master bedroom and one was a smaller bedroom, which would mean according to the Tourist/Cabin regulations that means that no more than 4 people could be at that property. In just the last 2 weeks on one occasion there were more than 4 people there and there have been in other occasions more than 4 people there. That is the one thing that I am concerned about since our bedroom does look out onto that property and the noise level when there were large groups on 2 occasions that that would be a real detriment too. It is hard to sleep and to say that it would be the same noise level as if a single-family lived there, if it's a single-family that lived there and we are neighbors, you would talk about that. But I mean when renters come in it is not the same thing as having a discussion with a renter as it is a neighbor that you are talking to.

Kaczmarczyk: Thank you. Anyone have any questions for Mrs. Terlizzi? Alright, thank you very much. Is there anyone else here who would like to speak in opposition to this petition? Seeing none. Mr. Carmin, you asked if you could possibly have a moment to speak again to rebut. Ms. Schopp?

Schopp: 2 things I would like to address. The house to the north is owned by my son, Garrett

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Schopp and his wife Eva Schopp. They purchased the house 2 years ago but they were in a lease in town and they run it on Airbnb. It was totally unrelated to me. When they received the notice from the County, there was a delay because of some mailing issues, but when they received it, they ceased. It is now owner occupied. They are in the process of moving in there. That is going to be their family home and it is next door, kind of next door to me. That is really not an issue any longer and as far as bachelor parties, I have had 2 sons get married in the last 3 years. Right now, a lot of times it is a gathering place for our family and friends we will cook out on the deck and I really do believe that Airbnb people tend to be quieter and more respectful. But we do gather there and that is within our legal right to gather there and cookout. So, we do use the property as a family and there tends to be some noise with that. But we try to keep it down and try to keep it before 10 o'clock. Anyway, I just wanted to try to clarify those things.

Kaczmarczyk: I have one quick clarification. You said that the house in question has 2 bedrooms, a master bedroom and a second?

Schopp: It is a trailer. It is a 1980's vintage trailer and it has a queen sized bed in the master bedroom and you can barely fit around it. The other one has a set of bunk beds.

Kaczmarczyk: Ok. Thank you. Any other questions? Alright. I think we have covered our public speaking. Yes. Questions for staff?

## **ADDITIONAL QUESTIONS FOR STAFF –1805-VAR-14 - Schopp**

Kruzan: David, or whoever, if I can go to the finding under B2 and I think Mr. Carmin touched on this too, but I was already focused on it. Under the 4<sup>th</sup> bullet point on B2 finding it says based on previous enforcement and research pertaining to the site, it is evident there are adverse impacts on surrounding properties and you know right above that in 2, whenever something says etcetera, etc., of course that means the list we are seeing is not exclusive. What is it that is based on a previous enforcement at this site that was the issue that will impact the surrounding properties?

Yanke: I guess from speaking with one of my supervisors and the Zoning Inspector, with discussions over the phone and hearing some of the things along the way it sounds like some of the noise and the impacts not necessarily just associated with the property to the north may be applied to this property as well and I think we have heard some of that here tonight. I think specifically its enjoyment, that word in that sentence that you can kind of look at in a number of ways. So, just the fact that there was a citizen complaint on it according to the enforcement letter I think just kind of drove our notion that, I mean, behind that finding I guess a fact.

Kruzan: Ok, I understand that. I have 2 follow-ups. What this sentence says to us and to the public is based on previous enforcement and research pertaining to the Tourist Home or Cabin on the petition site. What you are saying is it sounds like it is not about the petition site, it is noise that occurred elsewhere and that that possibility could occur here.

Yanke: Well, I mean, it is I just couldn't find it within this packet. There is a separate enforcement number, they were kind of looped together. But my understanding talking to my supervisor and the Zoning Inspector is that there was a complaint-driven enforcement action specifically on this

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property which the enforcement letter does say on the file.

Kruzan: Oh, on this site?

Yanke: Yes, so there definitely are 2 enforcement complaints and actions on it, I just don't have as many details compared to the one on the north and then also I do think that in speaking with some of the people and some of the testimony and also a neighbor to the west that submitted an email in the packet that that could be lumped into some of the enjoyment of surrounding properties as well.

Kruzan: That complaint, since we don't have the details here, that complaint could have been about, no offense at all intended, but in any instance it could be able the family making noise not about necessarily a renter making noise. Correct? It could have been a bachelor party for family that has a right to be there to own it.

Yanke: It could be any number of things, I guess.

Kruzan: Ok. I want to make sure though because this somewhat implies that because it was being run somehow as a Tourist Home or Cabin there are previous enforcement actions that were taken and that is a problem. That is not necessarily the case.

Yanke: All that I can say is that there definitely was a specific enforcement complaint or complaint driven enforcement on this petition site as well.

Kruzan: The other issue, I guess I want to be careful about is I am wondering, aloud, if this other complaint and the other property hadn't happen to have been in the same last name if we would even be talking about it that much. How much would we be putting weight on that? Let me go back to that number 2 where you touched on that word use and enjoyment of other properties. What is given to use from Mr. Carmin's side is the ponding of water, the interference to the sewage disposal system, easement, stormwater facility, natural water course, all of which involve environmental pollution issues. Does enjoyment mean more than that? Obviously the quiet enjoyment of property, another legal term, is that intended in this section though? Why is that not one of the things that is listed, I guess? Noise or freedom to use your property without interference?

Schilling: I think that is just sort of implicit in that term, quiet enjoyment.

Kruzan: I just what I heard Mr. Carmin bring up, he was surprised at staff, the only one that he said he was, he disagree with things but he was surprised at, and that was the same section I was reading and looking at previous to his memo today, this says that it will not promote conditions detrimental to the use and enjoyment of other properties in the area. Now if that is all that it said, then I get noise and other issues would factor in but the specifics that are given it looks like in ordinance are the ponding of water, interference with sewage disposal system, far more environmental, technically oriented things, not...

Wilson: Again, I think one of the reasons for the regulations of Tourist Homes is that it is not just the number of bedrooms. As you have heard from testimony you may have 20 or 30 people for a

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party that aren't staying at the actual home. So, often times these are sited per bedroom as far as the septic tank capacity and inspections by the County Board of Health and they are not really designed to handle 20 or 30 people at a party. Ok and I think that is one of the reason at least for scrutiny for the County as far as looking at these and that is a concern we always have when we are looking at a Tourist Cabin or enforcement or issuing a permit is the capacity there sufficient to handle the amount of guests invited. So often times we will put a limit to how many guests can be on site not just the number of bedrooms.

Kruzan: Got it.

Wilson: So, that impacts, that kind of goes to the finding as far as possible impact on septic tank. I don't know whether there is adequate evidence on this case or not but that is the reason they were concerned about it.

Kruzan: Thanks.

Carmin: The reason I was surprised is this finding, all your discussion is about use, this finding goes to conditions of the property or offsite or onsite conditions those have physical issues not use issues. That is why all of the examples are all physical issues of drainage and environment issues of sewer and versus septic and we are on sewer by the way, as I noted. That was my surprise there. Other findings go to whether the use causes adverse impact on the adjacent properties and they didn't find that it did. So, I think it is just mistaken, I think it is just wrong.

Kaczmarczyk: Thank you and I will add a comment because I did find at first when Jordan mentioned the complaint on the northern property in some way factoring in and then I thought to myself, well, it is relevant because regardless of whether the family even owns or it's the same last name, we have a similar property with a similar usage and similar complaints to the property and they are within give or take a quarter mile of each other. So, I would say that I think it is reasonable to have looked at that and say we can extrapolate from that and say there is a problem there so it could be a problem here as well.

Wilson: I did have Jordan put up the zoning for this area. One other reason I think there may be a reason for the 200 foot requirement is the area that you see Suburban Residential, the property to the south where the neighbors were complaining, those are zoned Suburban Residential. They have 5 foot side yard setbacks and Tourist Homes are not allowed in those districts. The gold area would not even be allowed under the ordinance to have a Tourist Home because the lots are traditionally too small and the side yard setbacks are too reduced to create any kind of buffer. As Dave was saying the Minimum Lot Width in an Agricultural/Rural Reserve zone or a Forest Reserve zone where Tourist Homes are permitted if they meet conditions is 200 feet. In effect what this ordinance does is create at least a lot between the house and the Tourist Home use.

Clements: Could one not just as well ask why in the Suburban Residential home why did they build it so close to the property line and so close to the other home? I mean I could also ask if you need and demand quiet to sleep why is it built so close to the other structure. Because it came second. Is that not true?

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Wilson: Well, it came second to an existing residential use not a Tourist Home. I mean, I don't think we have any evidence this was a Tourist Home at the time these people built their house.

Clements: But it had the right to be one. It had the right to be one.

Wilson: No, well....

Clements: Because it was a permitted use in the zone.

Wilson: It is a permitted use in the zone but if you were looking at the ordinance you would say it doesn't meet the requirements for a Tourist Home. I don't have to worry about it because it has to be 200 feet away, I think.

Clements: They decided to build the home on Suburban Residential, they decided to build it within a 200 foot buffer of the other home. Well, to me it's just which came first? If someone buys a lake front property and they have their vision of the good life and that good life includes having friends and family around for one person and then for another it includes complete calm and quiet and no extraneous noise. Well, that is kind of a conflict of 2 visions of the good life that only good neighboring can remedy. Am I right? Am I missing something here?

Wilson: I think the new statute that legislation passed regarding Airbnb's and again I think Mike or Dave mentioned our ordinance predates that so it doesn't apply to our ordinance. But also defines the Airbnb's that cannot be regulated under ordinance, under new ordinances, as where the rental occurs in an owner occupied home. There is a distinction made in the statute in regard to an owner occupied Airbnb and other non-owner occupied cabins. I think that may be partially, kind of gets to what you are saying that we don't regulate family activities, residential uses and yeah, you may have a family that has 20 people every weekend and you would be subject to noise and so on. But you would also have the family there to go walk over and tell Ozzy and guys to cool it.

Clements: Ok, you have answered my question.

Wilson: Does that make sense?

Clements: Yes. Thank you.

Kaczmarczyk: I just want to get clarified. So you are saying when you had the zoning map up the yellow lots, the north and the south, are both SR and they couldn't have Tourist Homes, period. Correct?

Wilson: Not under our ordinance, they are not allowed.

Yanke: Yeah, you would have to ask for a Use Variance.

Kaczmarczyk: Ok and we don't know of a logical reason why we have this RR lot squeezed in between to SR lots, who knows.

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Schilling: Yeah, I think Peter that you could not have a Tourist Home anywhere in Monroe County until we recently adopted the Tourist Home ordinance. So, when the neighboring house was built Tourist Homes were not allowed and I think the SR lots were created, were identified as SR because they were generally substandard lots in the area that they departed in size and so forth. So they wanted to create special regulations for them so that they could be developed and not subject to the ones that applied. So there are pockets of areas in the county where we have small lots.

Clements: This one is in fact about a half a mile away from Jellystone Camp Grounds according to Google Earth, it is about a half mile away from other camp grounds that are for rent. To me the issue seems to be more one of noise and neighborliness rather than Tourist Home and privacy. Because the trees are there, to me that seems to be what the issues seems to be and I don't think that anything we can do will change that. Because whether they are allowed to operate Tourist Home in this mobile home structure they have with the beautiful deck or not, whether they have guests to their home and have them stay at the mobile home, really the issue is how you promote good neighborliness between the parties in this kind of contested area.

Kaczmarczyk: Thank you. Anyone else have any comments or questions? If not, I will entertain a motion.

**FURTHER QUESTIONS FOR STAFF - 1805-VAR-14 - Schopp**

Clements: Ok. I don't know how I would say it right.

Kaczmarczyk: Give it your best shot and we will get through it.

Clements: Ok, let me get back up the document and I would say that in the **matter of 1805-VAR-14, the Schopp Conditions for a Tourist Home Variance to Chapter 802, I would recommend that we approve variance for, in favor of the Tourist Home to be operated on that property.**

Kaczmarczyk: Would you be basing that on Mr. Carmin's findings of fact?

Clements: **On the findings of fact and also just on the discussion here today and the complaints are not necessarily pertaining to the findings of fact.**

Kaczmarczyk: Ok, do we have a second? Not me either.

Clements: Ok.

Kaczmarczyk: **Motion dies for lack of a second.**

Kruzan: I am going to try this. I don't know if approval is the right word here, how we word it here. But **I move in approval of case 1805-VAR-14, based on the findings of fact as staff presented them. I don't know if you move approval of this case or denial of this case. I don't know which word.**

Yanke: **You are basing it on our findings, did you say?**

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Kruzan: **Yes.**

Yanke: It would be a **move to deny.**

Kruzan: Ok, **it is denial of the case** and not approval the staff's recommendation.

Yanke: It **would be a denial.**

Kruzan: I just want to be sure. **I will move denial of case 1805-VAR-14, based on the findings of fact.**

Kaczmarczyk: I will **second.** Larry, if you could call the roll please.

Wilson: I will call the roll. The vote is on petition 1805-VAR-14, Schopp Variance for Conditions for a Tourist Home. A vote in favor is a vote to deny the variance based upon the submitted findings. Margaret Clements?

Clements: No.

Wilson: Peter Kaczmarczyk?

Kaczmarczyk: Yes

Wilson: Mark Kruzan?

Kruzan: Yes.

Wilson: **The vote is 2 to 1 and fails for lack of a majority.**

Kaczmarczyk: So, my understanding is that they can come back and try again next month and hopefully we will have a full Board.

Carmin: (Inaudible)

Yanke: I wasn't here last month. I think in May we continued one of the cases to August because June and July were short.

Kaczmarczyk: Yeah, the hope was that there would be a full Board in August. Thank you.

**The motion in case 1805-VAR-14, Schopp Conditions for Tourist Home Variance to Chapter 802, failed for lack of majority, case will come back to August Board of Zoning Appeals Meeting, carried (2-1)**

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**NEW BUSINESS**

**2. 1805-VAR-17**

**Brown Stansifer Minimum Lot Size Variance to Chapter 804**

One (1) 0.50 +/- acre parcel in Van Buren Township, Section 24 at 4854 S Stansifer Ln. **Zoned ER.**

**BOARD ACTION:** Kaczmarczyk introduced the petition.

**STAFF ACTION:**

Nester: This is a Minimum Lot Size Variance for a lot in the Estate Residential zoning district, which requires 1 acre. This petitioner has a half acre parcel that they are wanting to develop. The location is in Van Buren Township and the Comprehensive Plan has it split between Rural Residential and the MCUA Suburban Residential. The current zoning is Estate Residential like many of the lots surrounding it and I did a parcel size map for lots that are in this area. To note here, the lot does look like it is 2 parcels but it is actually all 1. It is just separated there I think by a section line. But the green lots nearby all do not meet the 1 acre requirement, so if you flash back to the zoning Estate Residential requires 1 acre. Some of the lots on the southeast side of Stansifer are Suburban Residential, so it wouldn't apply. But the lots directly adjoining it, the green ones do not meet 1 acre, just to get an idea of the lots sizes around this area. Site conditions here, they are fairly flat. The petitioner wants to add a garage to that property where the white car is located. So, as you can see it is flat where he wants to add that garage, kind of an already built garage, 576 square feet adding it to the property. Here are some site photos for you. The first one is on Stansifer Lane and then the second photo viewing north to the house and the driveway there. On the left here I have where his truck is parked is kind of where he would like to put the garage meeting all do the required setbacks and other design standards. Then a bird's eye view of the property as well. Here is the petitioner's submitted site plan. It is kind of hard to see here but just note that meeting all side setback requirements which are 15 feet, so the closet that he will come to the side setback here is 24 feet. So he is exceeding that. Staff is recommending approval and I will take any questions that you have.

**RECOMMENDED MOTION:**

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

**FINDINGS OF FACT: Minimum Lot Size Standard**

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

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

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

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**Findings:**

- Approval of the variance would allow the petitioner to add a 24' x 24' garage to the lot;
- The parcel has a home and one accessory structure on it;
- The petition site is zoned Estate Residential (ER);
- The minimum lot size in Estate Residential (ER) is 1 acre;
- The parcel is not platted;
- There is no evidence that the building site is located on sensitive lands;
- There is no known karst on the property;
- There is no evidence that the building would obstruct a natural or scenic view;
- There are other parcels nearby that are under 1 acre in size in the Estate Residential (ER) zone;
- Conclusion: It would not impair the stability of a natural or scenic area.

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

**Findings:**

- See findings under A (1);
- Approval of the variance allows for the petitioner add one 576 square foot garage to the north side of their home;
- The parcel is addressed off of S Stansifer LN, a Local Road;
- Conclusion: It would not interfere with or make more dangerous, difficult, or costly, the use, installation, or maintenance of existing or planned transportation and utility facilities.

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

**Findings:**

- See findings under A(1) and A(2);
- The proposed garage will be 24' x 24', or 576 square feet. The structure would meet all other design standards for the Estate Residential (ER) zone;
- Most of the adjoining properties do not meet the minimum lot size for the Estate Residential (ER) zoning district (See Exhibit 1);
- Conclusion: The character of the property included in the variance would not be altered in a manner that substantially departs from the characteristics sought to be achieved and maintained within the relevant zoning district.

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

**Findings:**

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

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

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

**Findings:**

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

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

**Findings:**

- See findings under A (1);
- There is no floodplain on site;
- The site is not in the Environmental Constraints Overlay;
- The area proposed for the garage does not exceed 15% slope requirements;
- Conclusion: It would not promote conditions (on-site or off-site) detrimental to the use and enjoyment of other properties in the area.

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

**Findings:**

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

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

**Findings:**

- See findings under (A)(1);
- The strict application of the ordinance would not allow the petitioner to further develop their lot;

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

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surroundings). Variance approval applies to the subject property and may be transferred with ownership of the subject property subject to the provisions and conditions prescribed by or made pursuant to the Zoning Ordinance.

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

**QUESTIONS FOR STAFF – 1805-VAR-17 – Brown Stansifer**

Kaczmarczyk: Thank you, Jackie. No questions from me. Any questions for staff? Ok, no questions for staff. Would the petitioner or the petitioner’s representative like to address the Board? It is not required. Alright. Is there anyone here who would like to speak in favor of the petition? Anyone here who would like to speak in opposition to the petition? Seeing none. Further discussion or I will entertain a motion.

**PETITIONER/PETITIONER’S REPRESENTATIVE –  
1805-VAR-17 – Brown Stansifer: None**

**SUPPORTERS – 1805-VAR-17 – Brown Stansifer: None**

**FURTHER SUPPORTERS –1805-VAR-17 – Brown Stansifer: None**

**REMONSTRATORS –1805-VAR-17 – Brown Stansifer: None**

**ADDITIONAL QUESTIONS FOR STAFF –1805-VAR-17 – Brown Stansifer: None**

**FURTHER QUESTIONS FOR STAFF – 1805-VAR-17 – Brown Stansifer**

Clements: **In case number 1805-VAR-17, I recommend that we approve.**

Kaczmarczyk: Based on the findings of fact.

Clements: **Based on the findings of fact.**

Kruzan: **Second.**

Kaczmarczyk: And we have a second. Larry, can you call the roll, please?

Wilson: The vote is on petitioner 1805-VAR-17, Brown Stansifer Minimum Lot Size Variance. A vote in favor is a vote to grant the variance. Peter Kaczmarczyk?

Kaczmarczyk: Yes.

Wilson: Mark Kruzan?

Kruzan: Yes.

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Wilson: Margaret Clements?

Clements: Yes.

Wilson: The variance is granted 3 to 0.

**The motion in case 1805-VAR 17, Brown Stansifer Minimum Lot Size Variance to Chapter 804, in favor of approving the variance with the conditions and commitment attached to the motion carried unanimously (3-0)**

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**NEW BUSINESS**

**3. 1806-VAR-18**

**Lee Minimum Lot Size Variance to Chapter 804**

**4. 1806-VAR-19**

**Lee Minimum Lot Width Variance to Chapter 804**

One (1) 1.09 +/- acre parcel in Bean Blossom Township, Section 36 at 3744 W Delap Rd. **Zoned AG/RR.**

**BOARD ACTION:** Kaczmarczyk introduced the petition.

**STAFF ACTION:**

Behrman: This is located at 3744 West Delap Road. That is in Bean Blossom Township, Section 36. Rural Residential is what the Comprehensive Plan designates it as and the zoning is Agricultural/Rural Reserve. Agricultural/Rural Reserve requires a 2.5 acre Minimum Lot Size and a 200 foot Lot Width. This lot does not meet the standards and that is why we are here this evening. This represents a quarter square mile from the petition site and it does show that there are some other lots, I believe in the packet it says 6 other lots that do not meet the Minimum Lot Size requirement and then of that 2 of those did not meet the Minimum Lot Width. So, it is not a unique situation for this area. This is the site conditions from 2016. This was the aerial that we had at the time. Things have changed there a little bit. Here is in this photo you can see an RV, I don't know if I will be able to describe it but that is now removed and western most accessory structure on the site there has been moved, I believe, 3 and half feet towards the east, which wasn't quite enough, unfortunately. We will get to that later. This is the slope map. Most of the structures are not located within the 15 percent slopes. There is a detached garage that is actually existing, it is a pre-existing nonconforming structure. It has been there since before 1997 and there is a very small shed that also has been on the site for a while. An accessory structure that is approximately 12' feet by 24' feet, I believe it was placed there in 2014 and then within the last 2 years there was another accessory structure that was placed on site where a modular home used to be. An issue with our County ordinance is you cannot live within an accessory structure. The petitioner I believe is trying to meet Building Code standards with that structure to make it residential and meet those codes. It will take a little bit to do that. There are some of the photos from the site visits. In the upper photo you can see the detached garage that has been there for quite some time and this is along West Delap Road with the parking area and they do have a driveway. In the background you can see the accessory structure that they are converting into a home. The bottom picture is the accessory structure that is being converted into a home. It is a 12' by 32' foot structure. These 2 photos are of the accessory structure that is 12' by 24' and does not meet our side lot requirement currently. It is supposed to be 15' feet and the property owner to the west, actually his property kind of wraps around her site to the north and to the west. He had BRCJ Surveyors come out and stake that line which gave us exact information that we needed and I was able to run a tape measure between that structure and the property line that was staked. It only comes up to 11' feet 6 inches, so we are 3' feet and 6 inches shy of meeting that requirement. The upper picture is also that accessory structure kind of showing that it looks like there is room to move that. It would meet slope requirements. My only question is if by moving it the 3 and half feet, would it interfere with any utilities? That is my only concern with that. But there is also a lot of other room on the property to accommodate this structure and make it meet the required setbacks. In the upper picture I am standing on the northwest corner of the lot so I am kind of facing West Delap Road here and I am basically showing that there is the staked line and how all of the other structures are in position with some of the other structures adjacent to it to the east and then the bottom picture is the pictometry view that we

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have. Again, you can see the RV there next to that detached garage and it has since disappeared. The property has been cleaned up a little bit, since before this petition happened. This is the petitioner's site plan and it does show all of the structures. She thought she had moved her shed to meet the 15' foot setback and once we had the more concrete evidence of the survey it shows that it does not. Staff's recommended motion is we recommend approval of both the Minimum Lot Size and the Minimum Lot Width Design Standard Variances based on the findings of fact and subject to the following 2 conditions;

- 1) The 12'x24' accessory structure must meet the 15' side setback requirement either by relocating the structure, which is preferred, or obtaining a Side Setback Variance by October 1, 2018.

This gives her about 120 days. I came up with this one with the Building Department was well. The Building Commissioner and I agreed that;

- 2) A Certificate of Occupancy must be obtained from the Building Department showing compliance for both the 12'x24' accessory structure, meaning that it is anchored properly and that the foundation is correct, and that also the 12'x32' residence must fully be a residence by October 1, 2018.

We feel 120 days is a good amount of time to achieve that. Also by her living in a structure that is not stamped with all the normal manufacturing stamps for a residence there could be some safety issues. So, that is why the building codes exist to make sure that we have safe living conditions for people. This manufactured shed was never met to be a residence. So it does have to do a lot of upgrades in order to try to meet building code standards and so these are the 2 conditions that staff recommends. Any questions?

**RECOMMENDED MOTION:**

Staff recommends **approval** of both the minimum lot size and minimum lot width design standards variances based on the findings of fact with the following conditions:

1. The 12'x24' accessory structure must meet the 15' side setback requirement either by relocating the structure or obtaining a side setback variance by October 1, 2018.
2. A Certificate of Use and Occupancy must be obtained from the Building Department showing compliance for both the 12'x24' accessory structure and the 12'x 32' residence by October 1, 2018.

**FINDINGS OF FACT: Minimum Lot Size Chapter 804**

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

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

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

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**Findings:**

**Primary:**

- Approval of the variance would allow a 12'x24' accessory structure and a 12'x32' accessory structure in the process of being converted to a residence to remain on the property;
- The adjacent uses are residential and agriculture;
- There are no designated scenic areas nearby;
- The structures do not encroach on drainage areas, steep slopes or environmentally sensitive areas such as karst features;

**Conclusion:**

- Approval of the variance would not impair the stability of a natural or scenic area.

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

**Findings:**

**Primary:**

- See Findings A(1);
- W Delap RD is a local road and runs along the southern property line;
- The existing ingress/egress points of access to W Delap RD has a driveway permit 2015122 on file;
- The two existing accessory structures has no foreseeable impact on utilities;
- It is possible that some minor utility work will need to occur to move the 12'x24' accessory structure to meet the 15' setback;
- The site utilizes a septic with repair permit # 20873;

**Conclusion:**

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

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

**Findings:**

**Primary:**

- See Findings A(1) and A(2);
- The property is zoned Agriculture Rural Reserve (AG/RR);
- The required minimum lot size is 2.5 acres;
- The lot size measures approximately 1.09 acres;
- The use is residential with surrounding areas being residential and agricultural;
- The Comprehensive Plan designates this area as Rural Residential;

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- The lots in the area were created prior to the existing standards and many do not meet the current minimum lot size requirements;
- There are seven lots within a quarter square mile from the petition site zoned AG/RR that do not meet minimum lot size requirements;

**Conclusion:**

- Approval of the variance would not alter the character of the property in a manner that substantially departs from the characteristics sought to be achieved and maintained with the relevant zoning district;

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

**Findings:**

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

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

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

**Findings:**

**Primary:**

- See Findings A;
- The purpose of the minimum lot size is to ensure adequate light, air, privacy for adjacent properties; to provide access to any structure for maintenance and emergency services; and to preserve the general character of zoning district;
- Staff supports the petition for minimum lot size as long as the 12'x24' accessory structure meets the condition of approval regarding the side yard setback compliance;

**Conclusion:**

- Approval of the variance would not significantly impact the purposes of the design

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

**Findings:**

**Primary:**

- See Findings A and B(1);
- The lot drains to the northwest;

**Conclusion:**

- There are no foreseeable detrimental conditions to the use and enjoyment of other properties that would result from the proposed expansion;

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

**Findings:**

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

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

**Findings:**

- Practical difficulties have been demonstrated in that the lot exists in the current configuration and two structures have existed within this preexisting non-conforming lot since the 1970's and has also been used for residential purposes since then;
- Petitioner has applied for two variances, which is the minimum necessary in this case in order to allow the unpermitted 12'x24' accessory structure to remain on the site and to allow the unpermitted 12'x32' accessory structure that is converting into a residence to remain on the lot in the proposed location.
- Staff requires two conditions of approval to be met to support the approval of the variance.

**FINDINGS OF FACT: Minimum Lot Width**

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

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

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

**Findings:**

**Primary:**

- Approval of the variance would allow a 12'x24' accessory structure and a 12'x32' accessory structure in the process of being converted to a residence to remain on the property;
- The adjacent uses are residential and agriculture;
- There are no designated scenic areas nearby;
- The structures do not encroach on drainage areas, steep slopes or environmentally sensitive areas such as karst features;

**Conclusion:**

- Approval of the variance would not impair the stability of a natural or scenic area.

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

**Findings:**

**Primary:**

- See Findings A(1);
- W Delap RD is a local road and runs along the southern property line;
- The existing ingress/egress points of access to W Delap RD has a driveway permit 2015122 on file;
- The two existing accessory structures has no foreseeable impact on utilities;
- It is possible that some minor utility work will need to occur to move the 12'x24' accessory structure to meet the 15' setback;
- The site utilizes a septic with repair permit # 20873;

**Conclusion:**

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

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

**Findings:**

**Primary:**

- See Findings A(1) and A(2);
- The property is zoned Agriculture Rural Reserve (AG/RR);
- The required minimum lot width is 200';
- The lot width measures approximately 162';
- The lot must be 180' wide to be considered for an Administrative waiver;
- The use is residential with surrounding areas being residential and agricultural;
- The Comprehensive Plan designates this area as Rural Residential;
- The lots in the area were created prior to the existing standards and many do not meet the current minimum lot width requirements;
- The two other lots within a quarter square mile, zoned AG/RR, do not meet minimum lot width requirements;

**Conclusion:**

- Approval of the variance would not alter the character of the property in a manner that substantially departs from the characteristics sought to be achieved and maintained with the relevant zoning district;

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

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**Findings:**

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

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

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

**Findings:**

**Primary:**

- See Findings A;
- The purpose of the minimum lot width is to ensure adequate light, air, privacy for adjacent properties; to provide access to any structure for maintenance and emergency services; and to preserve the general character of zoning district;
- Staff supports the petition for minimum lot width as long as the 12'x24' accessory structure meets the condition of approval regarding the side yard setback compliance;

**Conclusion:**

- Approval of the variance would not significantly impact the purposes of the design

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

**Findings:**

**Primary:**

- See Findings A and B(1);
- The lot drains to the northwest;

**Conclusion:**

- There are no foreseeable detrimental conditions to the use and enjoyment of other properties that would result from the proposed expansion;

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

**Findings:**

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

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

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### Findings:

- Practical difficulties have been demonstrated in that the lot exists in the current configuration and two structures have existed within this preexisting non-conforming lot since the 1970's and has also been used for residential purposes since then;
- Petitioner has applied for two variances, which is the minimum necessary in this case in order to allow the unpermitted 12'x24' accessory structure to remain on the site and to allow the unpermitted 12'x32' accessory structure that is converting into a residence to remain on the lot in the proposed location.
- Staff requires two conditions of approval to be met to support the approval of the variance.

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

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

### QUESTIONS FOR STAFF – 1806-VAR-18 & 1806-VAR-19 - Lee

Kaczmarczyk: I am just curious. I am assuming the reason that they are not asking for the Side Yard Setback for the accessory structure now would be because they had thought that they had moved it enough and just found out recently.

Behrman: Yes.

Kaczmarczyk: Ok.

Behrman: We try to go with the best available data and at the time she had eyeballed it and thought she was using a post and something else that she thought was correct and when you actually have a licensed surveyor come out to the site and stake it then you get the accurate information that we could use for the report. It was too late to try to add this into the petition because of the notice we would not have been advertising for that Side Setback with this hearing.

Kaczmarczyk: Ok. That was my only question. Any other questions of staff? Seeing none. Would the petitioner or the petitioner's representative like to address the Board? As I said before, it is not required. Is there anyone here who would like to speak in opposition to this petition?

Behrman: I think the petitioner...is that your representative...or is that...ok.

Kaczmarczyk: Ok, so we are back to the petitioner or their representative.

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**PETITIONER/PETITIONER'S REPRESENTATIVE –  
1806-VAR-18 & 1806-VAR-19 – Lee**

Hamilton: Jean Hamilton. I am Laura Lee's mother and this has been a journey for her. Anyway, this was a dream of hers when she found the property and I went with her and she purchased the property in 2011. Her plans at that time was to put up a small house on it, a 2 bedroom, one bath, cute little house, a bungalow. In the meantime, health had went bad so she was reduced down from 5 days a week to 3, so therefore, the money kind of went away. About 4 years ago I purchased the trailer that was on the property we thought maybe could be repaired and taken care of and she could live there until we could get the funds to do the other. However, the floorboards in the bathroom went bad and it couldn't be fixed, so it had to go away. The only option was at the moment, I bought a 5<sup>th</sup> wheel trailer for her to live in and her stepdad and I, we unpin it and put everything in it that we could possibly put in it where she could live in it through 2 winters. So, we got that done and she had an opportunity to buy this small 12' by 32' foot building and we thought it has got a cute little porch on it and it looks like a little house. We stepped in then and tried to help her financially with. I had it drywalled and some nice things done to the little building so that we could get her out of the 5<sup>th</sup> wheel trailer. In the meantime, while we were working on the property, I was painting on the outside, we noticed, I noticed that there was a vehicle, a truck keep going by just creeping by almost a dead stop and just was, so I told my daughter, do you know who this person is? No, I think it is a neighbor. So this had gone on since before the travel trailer, before it is has just all been, so this person approached my daughter about 3 weeks ago and told her that after things started and people having to her having to mow a whole acre of ground because it was not, you know, it wasn't made into a yard, it was property. Unfortunately, that has happened and she had been trying to comply with that. About 3 weeks ago there was a person that came to the door and act like was sympathetic and all this and that wanted to see the property. They wanted to be the first person to purchase the property because it falls in around his stuff. So, me as a mother, it just appeared to me that he was trying to do everything in the world to shut doors on her and again, it is due to health and due to other issues financially that we are where we are at the moment and we have had help with trying to help us to get through this where it can be something that she can be there and be able to live safely. I thank you for your time.

Kaczmarczyk: Thank you. It does sound like it has been quite an adventure. Anyone have any questions for Ms. Hamilton? Thank you very much. Is there anyone else here that would like to speak on behalf of the petitioner? Is there anyone here who would like to speak in opposition to the petition?

**SUPPORTERS –1806-VAR-18 & 1806-VAR-19 – Lee: None**

**FURTHER SUPPORTERS –1806-VAR-18 & 1806-VAR-19 – Lee: None**

**REMONSTRATORS –1806-VAR-18 & 1806-VAR-19 – Lee**

Gallagher: I am Tom Gallagher. I am not really in objection to the petition. My concern is the small shed that would be in compliance with the setback. It is not a permeant improvement, it is not on a slab or a foundation and I had the line staked and the conversation that I had with her daughter she told me she didn't think she could continue to take care of the place. She would have to move somewhere else and I said if you do let me know I would be interested in buying the place.

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So, that was kind of a mischaracterization of what happened. So that is my only concern is compliance as pointed out in the report.

Kaczmarczyk: So, you are concerned about that accessory building.

Gallagher: Correct.

Kaczmarczyk: Alright. I am pretty sure that that will get resolved through this process one way or another.

Gallagher: Thank you.

Kaczmarczyk: I assume no questions for the gentleman. Is there anyone else in the public who would like to speak in opposition to this petition? Seeing none. Further discussion, questions or I will entertain a motion.

**ADDITIONAL QUESTIONS FOR STAFF –1806-VAR-18 & 1806-VAR-19 – Lee**

Kruzan: If I could ask a quick question.

Kaczmarczyk: Go for it.

Kruzan: I apologize, you may have already said this Tammy. The petitioner understands and agrees to the recommended motions including the conditions?

Behrman: We went through this on the phone this week what was going to be required. So she knows and she has a copy of this packet with those conditions on it. We hope that she would meet those conditions and we would not have to turn this back over to enforcement.

Kruzan: Ok, and I should have asked that before. I don't know whether, I would kind of like to understand that and make sure.

Kaczmarczyk: Well, you can recall the petitioner or their representative if you would like to ask them.

Wilson: Real quickly, these are accessory storage structures. They are not designed for residential occupancy. They do not meet the standards for a mobile home because under our ordinance for the Building Code a manufactured home has to be stamped at the factory by the state and HUD meeting all of the requirements and so it's not a mobile home and so on the site it has to be basically converted to meet residential standards. That means foundation, electrical, insulation, ingress/egress, siding type, so it is a fairly complicated matter to convert these storage structures which were not built for human occupancy to meet the Building Code that is required. The Building Department is, I think, basically supervising or at least going to be reviewing the renovation to make sure it actually meets the requirement to convert it to single-family housing standards. That is what is going on. As far as her agreeing to it or not, she will not get an Occupancy Permit until that's done.

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Kruzan: Right, those are two different, thank you. Those are two different questions and I just want to understand the situation if we pass this, is this an impossible hurdle to clear? Doesn't mean you shouldn't pass it or that it is not going to have other hurdles that have to be cleared. I just want to understand the situation. So, is this something that can even be, can these conditions be met, do we believe?

Behrman: The Building Commissioner believed that after speaking with her and explaining what had to be done, it will take some money to accomplish these things, and with moving the shed over 3 and half or 4 feet she will have to move, I think I saw like a propane tank line but that is something that people, you know, I don't think what we are asking of her is an extraordinary thing.

Kruzan: Again, this is a really probably an unfair question but I am going to ask it anyway. Do you feel that the petitioner's and representative understand the conditions as they have been explained? Because it is one thing for us, for government to explain it to citizens and in our language but it might not always be...

Behrman: I think that she understands and that her family also understand the requirements.

Kruzan: Ok, and I will ask in a second. The reason I am going down this track is to understand is there any other solution to this or is this it? We have things that we would recommend.

Wilson: I think one of the options that was discussed with them is that it may actually be cheaper to find a manufactured home, for example, and put it on the site rather than trying to retrofit a storage barn.

Kruzan: Again, I know we can't recommend or...

Wilson: We can't force them to do that.

Kruzan: And or suggest...

Wilson: And they have the option to bringing it up to single-family standards but it may well be cheaper to go with the other option.

Kruzan: Thank you and that is what I was looking for. If you wouldn't mind I would like to have that.

Lee: I am Laura Lee. I just want to say that Mr. Jim, how do you pronounce his last name?

Behrman: Jim Gerstbauer, the Building Commissioner.

Lee: Yes. He has been out and inspected and was very impressed with the quality of the structure at this point. Which I do have the engineering plans which have been submitted and stamped by the state of Indiana meeting standards. I do plan on doing my best to comply with what he and I discussed on the phone after the inspection.

**DRAFT**

Kruzan: So, we believe what he is talking about and the petitioner are one and the same.

Behrman: I believe so and we aren't going to issue the Occupancy Permits until everything is correct and is signed off by Building and the Planning Department.

Kruzan: And that is something that has already been explained and you understand?

Lee: He and I discussed it, yes.

Kruzan: Ok. Thank you very much for coming up. I appreciate it. It helps a lot.

Lee: Thank you.

Kaczmarczyk: Thank you.

Lee: I am shy but thank you.

Kruzan: Thank you.

Kaczmarczyk: Any other questions or discuss or does someone have a motion?

**FURTHER QUESTIONS FOR STAFF – 1806-VAR-18 & 1806-VAR-19 - Lee**

Clements: **I would like to move that we approve 1806-VAR-18 and 1806-VAR-19, subject to the conditions that staff has stipulated in her recommendation and according to the findings of fact.**

Kruzan: **Second.**

Kaczmarczyk: We have a motion and a second. Larry, can you call the roll, please?

Wilson: Vote is on petition 1806-VAR-18 and 1806-VAR-19, I will combine them for purposes of the vote. A vote in favor is a vote to approve both the Minimum Lot Size Variance for Laura Lee and the Minimum Lot Width Variance. Mark Kruzan?

Kruzan: Yes.

Wilson: Margaret Clements?

Clements: Yes

Wilson: Peter Kaczmarczyk?

Kaczmarczyk: Yes.

Wilson: Both variances are granted 3 to 0 with conditions and based on the findings.

**DRAFT**

**The motion in cases 1806-VAR-18, Lee Minimum Lot Size Variance to Chapter 804, and 1806-VAR-19, Lee Minimum Lot Width Variance to Chapter 804, in favor of approving the variances with the conditions and commitment attached to the motion carried unanimously (3-0)**

**DRAFT**

**NEW BUSINESS**

**5. 1806-CDU-04**

**I-69 Towers II, LLC Conditional Use for Wireless Communications Facility (WCF), Chapter 813**

One (1) 9.85 +/- acre parcel in Indian Creek Township, Section 3 at 7430 S Harmony Rd. **Zoned AG/RR.**

**\*\*CONTINUED BY PETITIONER\*\***

**BOARD ACTION:** Kaczmarczyk introduced the petition.

**STAFF ACTION:** Petition was continued by the petitioner.

**DRAFT**

**REPORTS:**

**Planning/Wilson:** I really don't have any reports other than we really do have a quite active agenda coming up in August, fairly robust. The other thing that I will comment, just word out to the public, these cottage like structures that you see at the side of the road, do not meet the Building Code requirement in Monroe County for single-family residency. They are fine for storing things in, lawnmowers, etcetera, but you can't live in them without considerable expense to bring them up to Building Code.

Kruzan: Do you know if there is anybody marketing them for that purpose?

Wilson: Yeah, I think they are marketing them for that purpose and in a lot of counties without Zoning and Building Codes they are being used for that purpose. I think it is probably a gap in the state regulatory education or regulation. The concern is they don't necessarily have fire retardant materials, as far as wall, as far as fire resistance. They are not prewired, they are not on a foundation typically they are on skids so they are not tied down in the event of a wind storm or tornado. Those are the kinds of issues that come up with them. It is tough because it is an affordability issue as well. In fact, we have people wanting to live in storage units and it is a problem.

Kruzan: Right.

Wilson: That is going on throughout the county and I think even in Bloomington this is occurring.

Kruzan: Maybe David would know off of the top of his head, just kidding, but out of the 92 counties any idea how many this would be allowed and how many this would not be allowed?

Schilling: I would say it would probably be allowed in at least 3 adjoining counties.

Kruzan: So it is not unknown that it would be allowed.

Wilson: Well, they clearly do not meet the state requirements for a mobile home and that is technically what you are using it as, so it really kind of a question of enforcement in those counties that aren't set up to require Building Permits or Zoning Permits.

Kruzan: Thank you.

Clements: Could I ask one question, Larry? Since you mentioned the August agenda, is our next meeting on August 1<sup>st</sup>?

Wilson: It will be the first Wednesday in August.

Clements: The first Wednesday in August is August 1<sup>st</sup>.

Wilson: That is correct then.

Clements: Ok then, thank you.

**DRAFT**

**Legal/Schilling:** No report

**The meeting adjourned at 7:31 P.M.**

Sign:

Attest:

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Peter Kacmarczyk, Chairman

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Larry J. Wilson, Secretary