

BOARD OF ZONING APPEALS
Hybrid Meeting - Minutes
October 4, 2023 - 5:30 p.m.

CALL TO ORDER

ROLL CALL

INTRODUCTION OF EVIDENCE

APPROVAL OF AGENDA

APPROVAL OF MINUTES:

June 7, 2023

June 28, 2023

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

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

ABSENT: *None*

STAFF PRESENT: Jackie Jelen, Director, Tammy Behrman, Assistant Director, Anne Crecelius, Planner II, Shawn Smith, Planner II

OTHERS PRESENT: Jeff Cockerill, Legal, Tech Services

INTRODUCTION OF EVIDENCE:

Jackie Jelen introduced the following items into evidence:

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

Monroe County Zoning Ordinance (as adopted and amended)

Monroe County Subdivision Control Ordinance (as adopted and amended)

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

Cases advertised and scheduled for hearing on tonight's agenda

The motion to approve the introduction of evidence carried unanimously.

APPROVAL OF AGENDA:

Motion to approve the agenda, carried unanimously.

APPROVAL OF MINUTES:

Motion to approve meeting minutes from June 7, 2023, carried (4-0) with Skip Daley voting as present.

Motion to delay approval of the meeting minutes from June 28, 2023, to next meeting, carried.

ADMINISTRATIVE BUSINESS:

- 1. Proposed Changes to the BZA Rules of Procedure regarding Amended Petitions**
- 2. Sojourn Draft Findings by Legal**

OLD BUSINESS: None.

NEW BUSINESS:

- 1. VAR-23-23** **Cassady DADU Condition #55 Variance to Chapter 802**
One (1) 0.648 +/- acre parcel in Perry Township, Section 20 at 4820-4830 S Rogers ST, parcel #53-08-20-400-073.000-008.
Owner: Cassady, Randy
Zoned RE1. Contact: acrecelius@co.monroe.in.us
- 2. VAR-23-34** **Watson Minimum Lot Size Variance to Chapter 804**
One (1) 0.64 +/- acre parcel in Polk Township, Section 20 at 6420 E Allens Creek RD, parcel #53-12-20-200-004.000-010.
Owner: Watson, Shawn
Zoned FR. Contact: shawnsmith@co.monroe.in.us
*****CONTINUED BY STAFF*****
- 3. VAR-23-35** **Topoligus Residential Storage Structure Size Variance to Chapter 802**
One (1) 4.59 +/- acre parcel in Polk Township, Section 16 at S State Road 446, parcel #53-12-16-400-018.000-010.
Owner: Topoligus, James
Zoned FR. Contact: shawnsmith@co.monroe.in.us
- 4. VAR-23-36a** **Southern Minimum Lot Size Variance to Chapter 804**
- 5. VAR-23-36b** **Southern Minimum Lot Width Variance to Chapter 804**
One (1) 2.0 +/- acre parcel in Indian Creek Township, Section 4 at 7525 S Mt. Zion RD, parcel #53-10-04-400-004.000-007
Owner: Southern, Alverta
Zoned AG/RR. Contact: dmyers@co.monroe.in.us
*****CONTINUED BY STAFF*****

ADMINISTRATIVE BUSINESS

1. Proposed Changes to the BZA Rules of Procedure regarding Amended Petitions

Clements: Does anyone have any comments about that?

Loftman: **I move that we adopt the proposed Article VIII, Final Disposition of Cases.**

Daley: May I offer some discussion prior to that?

Loftman: Absolutely.

Daley: I would like to table this until the Board has the opportunity to discuss this at more in depth at an Executive Session due to the fact that this may or may not impact present litigation.

Loftman: My impression is that it probably doesn't have anything to do with present litigation. The horse is out of the barn with respect to present litigation and I don't think this would impact it.

Davidson: Can I confirm that? If you read that motion it specifically has the former language that was in effect at the time that case was disposed of.

Daley: Neither here nor there. I think that this is a matter that we should discuss in Executive Session at this point.

Loftman: I don't think it is critical that we pass this today. We just had to pass it or not pass it before the next crisis arises and it doesn't look likely tonight, so I am glad to second your motion to table it and ask administration and Planning Staff and council to set a date for an Executive Session.

Daley: Thank you.

Jelen: We will consult with Legal to make sure that we can meet an Executive Session for this topic. It may need to be discussed at a public meeting. But I will check.

Clements: Thank you.

Loftman: I think the point is we need to find out from council whether there is a, we could, I guess we have council here, it is not our most common council but, or you want to wait. If this is appropriate for an Executive Session, I think we should have one. If council wants to think about that we should give them the opportunity for that discussion.

Daley: I will reiterate my thoughts that this matter needs to have some discussion behind closed doors before we present a public discussion and vote.

Loftman: My suggestion is that staff and council get together, determine whether they think this is something that we can legally discuss in Executive Session. Because or rules had to be cited and usually discussed in open session.

Daley: I am fine with that.

Loftman: Yeah, ok, great. So, I think I was moving, and I will **withdraw my motion to adopt this tonight and ask staff to proceed as discussed.**

Daley: I **second** that.

Clements: Is a vote necessary, Ms. Jelen?

Jelen: I think if you would like to table to the next meeting, that would be helpful or if you want to remove it from the agenda until further notice, that would also be appropriate.

Clements: You could withdraw your motion.

Loftman: I made the motion.

Daley: He made the motion. I suggested that he make the motion.

Loftman: I am the one who made the motion and then Skip said, can we talk about it, and I said yes. We talked about it and as a result **I will withdraw the motion.**

Daley: May I recommend that **you amend your motion to table to a time yet to be determined?**

Loftman: You moved to table it. I will second your motion to table it.

Clements: So, if you could please call the roll on the tabling of this item 1 under Administrative Business?

Jelen: Can I suggest a friendly amendment of a table timeframe? Maybe 4 months or do you want it just to be?

Loftman: Till November.

Daley: Probably after the end of the calendar year is fine with me.

Jelen: By the end of the calendar year?

Daley: That's fine.

Jelen: Ok. It has been moved and seconded to the December 6th Board of Zoning Appeals Meeting. A vote in favor is a vote to continue this to December 6th. Margaret Clements?

Clements: Yes.

Jelen: Skip Daley?

Daley: Yes.

Jelen: Guy Loftman?

Loftman: Yes.

Jelen: Dee Owens?

Owens: Yes.

Jelen: Pamela Davidson?

Davidson: Yes.

Jelen: Ok, it has been continued to December 6th.

The motion in Administrative Business of Proposed Changes to the BZA Rules of Procedure regarding Amended Petitions, in favor of continuing to the December 6, 2023, Board of Zoning Appeals Meeting, carried unanimously (5-0).

ADMINISTRATIVE BUSINESS

2. Sojourn Draft Findings by Legal

Clements: First, I don't know, Jeff, if you would like to present that to us or if we just ask if there are questions from members of the committee?

Cockerill: I guess I would ask if there are questions from members of the committee and I will answer them to the best of my ability. I don't have a lot of history with this so if there is factual information in there. I am not sure I will be all of that helpful. I would say that I have seen a response from the council, I think it is Mr. Clark, who indicated that these were appropriate and that he did not have any objections to them. He did have one question as to whether they wanted to incorporate some of the other documents. But those are likely already in the record.

Clements: Ok, thank you Mr. Cockerill.

Loftman: I see that it is dated on the second page August 2023. I assume that would be corrected too today.

Cockerill: Yes, absolutely. It will be the date that you vote on it will be the date in that area.

Loftman: Will we sign this today if we pass it or with that we just write in the correct date, or do you want us to sign it at some other meeting?

Cockerill: I think if you approve it today, we can certainly have that change ready tonight for you to execute it tonight. I don't know your normal process on signing documents. But that is not out of the question.

Clements: Just to let you know Mr. Loftman will be leaving at 6:30 tonight, ok. Do members of the Board of Zoning Appeals have any questions about these proposed written findings of fact in support of our June 28, 2023, decision regarding Sojourn House request for a Use Variance?

Owens: Madam Chair?

Clements: Yes, Ms. Owens.

Owens: I read through this, and I think this follows exactly what we discussed and so if there is no further discussion, **I would make a motion to accept.**

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

Jelen: It has been moved and seconded to approve the Sojourn findings by the Legal Department. A vote yes is a vote to approve the findings. Guy Loftman?

Loftman: Yes.

Jelen: Dee Owens?

Owens: Yes.

Jelen: Pamela Davidson?

Davidson: Yes.

Jelen: Margaret Clements?

Clements: Yes.

Jelen: Skip Daley?

Daley: Yes.

Jelen: Ok, the motion is approved 5 to 0 and we will prepare those for your signature. Dee, we will have you sign it electronically. We will get in touch with you about that. Thank you.

The motion in favor of approving Sojourn Draft Findings by Legal, carried unanimously (5-0).

NEW BUSINESS

1. VAR-23-23

Cassady DADU Condition #55 Variance to Chapter 802

One (1) 0.648 +/- acre parcel in Perry Township, Section 20 at 4820-4830 S Rogers ST, parcel #53-08-20-400-073.000-008.

Owner: Cassady, Randy

Zoned RE1. Contact: acrecelius@co.monroe.in.us

BOARD ACTION: Clements introduced the petition.

STAFF ACTION:

Crececius: Yes, thank you. Ok, as you noted the petition site is in Perry Township. This is a request from multiple tidbits of language under Detached Accessory Dwelling Unit Condition #55 under Chapter 802. This is a design standards variance. One single variance but has multiple nuances to it under those standards. On the screen is the petitions site. You are seeing an older aerial image. The structure address is 4830 and labeled as Primary on the south side of the screen. It has currently been relocated. The structure labeled as 4820 is being considered as the DADU under this design standards variance tonight and that is on the north part of the property. The intent of this request is allow the existing dwelling addressed as 4820 South Rogers Street to remain as is. The Board of Zoning Appeals granted a Use Variance to allow the Accessory Dwelling Use on this property, which is zoned Estate Residential 1, or RE1, on April 5, 2023. That was labeled as VAR-23-7. Otherwise, without that approved Use Variance the use of an Accessory Dwelling Unit would not have been permitted in the RE1 zone at all. The approval was conditional dependent upon connection to sewer. A Floodplain Development Permit has been approved by the county Floodplain Administrator for the work in the floodplain to extend the sewer laterals to 4830. No work has been started at this time. On the screen is a blown up image of a certified plan. This shows the relocation of the primary residence, 4830. As you can see it has been moved back to the west on the property. Again, the structure known as 4820 or what is being considered as the Detached Accessory Dwelling Unit is to the north labeled as existing building. Here is a recent photo of the structure. The petitioner has continued work on the petition site without permits. See the site photos in your report packet for photos showing fill, seeding and other work performed in the right of way without a Right of Way Activity Permit. Additionally, the site had an active Stop Work Order on it until September 18, 2023. The Floodplain Development Permit issued did not include any work for the driveway removal and possible sidewalk preparation. Almost the entirety of the site is located in a mapped floodway. The request is for an Accessory Dwelling Unit and is defined as a separate, complete housekeeping unit with a separate entrance, kitchens, sleeping area, full bathroom facilities, which is attached or detached extension to an existing single family structure. So, the conditions that we are looking at here today are listed multiple under Condition #55, which would apply to Accessory Dwelling Units. Under Condition #55 there is a definition and then there is a list of additional standards. Some that apply to Attached Accessory Dwelling Units and some that apply to Detached Accessory Dwelling Units. I will go through the definition that is listed under Condition #55, kind of the main header and then the applicable standards for a Detached Accessory Dwelling Unit. Shown in red will be items that cannot be met and then I have comments listed below, bullet pointed and the areas that are statements that cannot meet that highlighted red text is my response in kind of a light yellow. One of the first issues, although there are multiple here that are met and I don't want to undermine that, but we will start with the

first one that is not met, which is under the first heading of Condition #55, which is minimum lot size must be 5 acres. The petition site is 0.64 acres and is technically under the required 5 acres. The next one is before final occupancy of an Attached Dwelling Unit or Detached Dwelling Unit the property owner must record an affidavit and commitment stating that the property owner will reside on the property. The property owner is to reside either in the principal dwelling unit or the detached accessory dwelling unit. Currently the petitioner will be required to record an affidavit committing to reside in one of the dwellings. Staff has included this as a condition of approval if the Board considers approval.

Clements: Ok.

Creelius: Sorry, still going. The next point is number 2 under the bullet list, specifically for Detached Accessory Dwelling Units, which is that the DADU must meet current standards of the residential building, mechanical, electrical, energy and environmentally critical area codes. At this point staff had noted that there is no evidence provided of flood prevention design have been shown. There are no proposed changes. Examples include elevating the structure, adding flood vents, elevating utilities, anchoring or other flood resistant materials. This is a very short abbreviation of some routes that could be done to provide some kind of flood prevention. Just to note there are a few more that the petition site does meet. To highlight this number 2, this is a site conditions map that we have seen before. Both of those structures are fully located within a FEMA mapped floodway. To keep moving forward, number 5, which is a DADU must have a permanent connection to either an approved septic or sewer system. The petitioner has not provided any information from the City of Bloomington Utilities proving sewer connectivity to the site. A capacity letter was submitted for the primary structure, elevated structure at 4830 but nothing has been shown for a Detached Accessory Dwelling Unit. There is a Floodplain Development Permit issued to construct those sewer laterals but no construction has commenced to date. Number 7, each DADU lot shall have a separate buildable area for each dwelling. This is kind of 2-part, which is the property we would not consider floodway as being located within a buildable area. But in April of 2023 the property did receive an approved variance from buildable area for this special flood hazard area, so this would meet the standard. On that same note though the structure that is being identified as the Detached Accessory Dwelling Unit is located within the front setback required for South Rogers Street. The structure is approximately 7.3 feet from the edge of pavement. According to the Monroe County Highway Department, the property does not have any dedicated right of way. Included is the letter from the petitioner. Moving on to the staff recommendation. Staff is recommending denial to the following reasons;

- 1.) The residential structure is located fully within mapped floodway and is within the front setback required for RE1. Petitioner hasn't provided any evidence of compliance with flood prevention design standards.
- 2.) The petitioner did not submit a letter from CBU proving sewer connectivity on this site. There has been a Floodplain Development Permit issued to construct sewer laterals, but no construction has commenced to date.

Included below staff has included recommended conditions if the Board considers approval of the petition. Does anybody have any questions?

CASE NUMBER	DETAIL	RECOMMENDED MOTION
VAR-23-23	Design Standard Variance from Ch. 802 Condition #55 Detached Accessory Dwelling Unit	Denial

812-5 Standards for Use Variance Approval: In order to approve a use variance, the Board must find favorable findings for all five (5) criteria, A-E, listed after the agenda within the BZA packet.

Recommended Motion Conditions or Reasoning:

Staff is recommending denial due to the following reasons:

1. The residential structure is located fully within mapped floodway and is within the front setback required for RE1. Petitioner hasn't provided any evidence of compliance with flood prevention design standards.
2. The petitioner did not submit a letter from CBU proving sewer connectivity on this site. There has been a Floodplain Development Permit issued to construct sewer laterals, but no construction has commenced to date.

If the Board of Zoning Appeals motions for approval, staff recommends the following conditions:

1. Sewer capacity letter provided to staff under an Improvement Location Permit (General) application. Physical connection to sewer be required for 4820 S Rogers St within thirty (30) days of the issuance of the Certificate of Occupancy for 4830 S Rogers St.
2. Record affidavit per Condition #55. Must be recorded before the Certificate of Occupancy for the dwelling addressed as 4830 S Rogers St. is issued.
3. After-the-fact Floodplain Development permit through the Planning Dept. to review the driveway configuration and possible sidewalk work.
4. Submit a Floodplain Development permit for the proposed DADU to meet Chapter 805-5 "Provisions for Flood Hazard Reduction" standards.

QUESTIONS FOR STAFF – VAR-23-23 - Cassidy

Clements: Do members of the Board of Zoning Appeals have questions for staff? Mr. Daley?

Daley: Present.

Clements: Thank you. Mr. Loftman?

Loftman: We did consider this same property in April and went through it in some depth. I hate to be dense but what didn't we address there that we are addressing now?

Creelius: There were 2 variances, I believe. What applied to the DADU and having 2 structures on one lot is we considered a Use Variance to allow that use on the property. It wasn't permitted at all. With a vote to approve the use is permitted but it is technically still permitted with standards. So, now we are considering those standards, some of which the property still can't meet.

Loftman: Ok, so, first we have to give general approval and then we have got to say, but these

are the conditions you either have to meet or we waive.

Creceilius: Yes. In theory we could have heard it all in one night but if the use got denied there would be reason to move forward.

Loftman: Got it. Thank you.

Daley: So, just for clarification, if I may, you said some of the standards can still not get met, is that largely due from my understanding to the physical location being 7 feet from the street?

Creceilius: In some way. Maybe not the setback, necessarily. That is unique to this site. But say minimum lot size, the one where it says 5 acres is required.

Daley: Sure, but this is 0.64.

Creceilius: So, where an accessory dwelling unit is permitted is generally larger lots. So, this is an RE1 zone which has a minimum lot size of 1 acre, so that is where we kind of see...

Daley: And that did not get addressed in the April meeting?

Creceilius: No.

Daley: Ok. Thank you.

Davidson: I have a question. You said that the items in red are conditions that cannot be met. The 5 acres cannot meet that. But some of the permits, the residency, the floodplain, remediation, the septic system, those could be met. So, did you mean to say that they have not been met and some can be a few cannot?

Creceilius: There are conditions inherent to the property that cannot be met. Both structures are residences located within the floodway. Although there are steps that can be done that is flood prevention it doesn't necessarily make it flood proof. Some things could be met, and we have included that in the proposed conditions if you consider it for approval.

Clements: Ms. Owens has her hand raised.

Daley: Oh, sorry.

Clements: Sorry Ms. Owens.

Owens: very good. Thank you very much. I read this and I just heard it again in the presentation but when you say they are still working without permits, I would like to expand that just a little bit, as well as having a Stop Work Order with just 16 days gone but work was continuing. Can you give a little more detail on that?

Creceilius: Yes, it was last year in July that a Stop Work Order by the Building Department was

issued. It was in effect until September. When we did a site visit for this variance petition, we did note that there was work done on the site. There was an area that was filled where the original, primary structure was located had been filled in, seeded and smoothed out. There is some evidence of maybe preparation for a sidewalk or some kind of minor landscaping. Work that may have required a Floodplain Development Permit and/or a Right of Way Activity Permit.

Owens: Thank you.

Clements: Mr. Daley.

Daley: Thank you Chairwoman. Ok, so there was a Stop Work Order issued when.

Creceilius: Last year.

Daley: In July of 2022?

Creceilius: Yes, and it was active until September of 2023.

Daley: The April approval of the variance did not automatically initiate work that was being discussed during that meeting to continue?

Creceilius: Correct. There was multiple, there was quite a bit of information requested at that time through the enforcement case that started in July of 2022. So, though those variances were great steps towards reaching compliance, there were still engineered plans that the Building Department were missing and there was still information for the Floodplain Development Permit that was missing.

Daley: That work that was done was seeding?

Creceilius: There was fill in a floodway, so, there was kind of an open pit area where the original elevated structure was located that had been filled, smoothed and seeded. That would have been long enough for grass to re-establish. It would have been done before the Stop Work Order was lifted.

Daley: Alright, thank you.

Clements: Mr. Loftman?

Loftman: As I understand it, there was a hole in the ground that was filled in without permission.

Creceilius: That is correct.

Loftman: That hole was probably sort of dangerous. It was close to the road.

Creceilius: Any fill in the floodway would need a Floodplain Development Permit.

Loftman: I understand. I understand. But it was a dangerous, it sounds like it was. How deep was the hole? Was it 2 feet or 7 feet?

Crececius: The site had fencing around the property for quite a while.

Jelen: I just want to clarify with a few dates. Anne is spot on. But the permit was issued on September 18, 2023, and I believe your site photos are from September 28, 2023. But the work that we are discussing under the permit that was issued was largely for the raised abode structure. Anne is just speaking to the site generally. There was some other work done on the ground that would not have been covered under that Improvement Location Permit.

Loftman: Thank you.

Clements: I think it is time to hear from the Cassady's. Do you both intend to speak tonight? Why don't you both come to the podium and you both can sign in. Then I will swear you both in and you will have 15 minutes together to team your presentation to us. Thank you.

PETITIONER/PETITIONER'S REPRESENTATIVE – VAR-23-23 - Cassady

R. Cassady: Good evening. I am Randy Cassady.

Clements: If you could both raise your right hands and do you both swear to tell the truth, the whole truth and nothing but the truth?

T. Cassady: Yes.

R. Cassady: I do.

Clements: Thank you. Now you have 15 minutes.

R. Cassady: Sorry, we got married in the courthouse and when she said I do, it just hit me.

Clements: If you could kindly be sure to speak into the microphone that would help us with hearing your testimony.

R. Cassady: Ok. I am Randy Cassady, the petitioner in regard to 4830, the redevelopment of structure at 4820 and 4830. Moving forward, I am back here, and I thought we had it all resolved in April. I was instructed that we didn't have it all done in April and they said you got to do this so that is why I am here. I thought we were complete and looking for the building permit. It has taken our timeframe until September 18th, and I got a call and said, ok, building permit is here. I am just trying to raise the structure and I am just asking for a design variance to be the same as the use variance. Apparently, they are 2 separate pieces that we had to ask for and on the existing residence, right there at 4820, that it just be a pre-existing nonconforming because it has been there for 100 years. Our intention of any particular possibility is making things better in regard to the aspect of filling around the tanks and the old basement. I will address that specifically. I put storage water tanks in to hold the water and there was a 2 foot gap. The reason those were filling

in specifically is because of Gigi Ingram who lives next door who is about 2 years old and just learned to walk. So, that is the specific reason why it was filled around those tanks. I put quarter minus in, in order to verify that there are no questions in regard to drainage and any issues with that. Because we live there. We know. The reason that you have nice, green grass is it had set as a dirt in order to continue on for a year and when I did that, it was like, ok, what are we going to do. I sodded it in order to get it green and prepared so that we didn't have a mud pit and potential possibility of erosion prior to the fall coming. So, that is the particular reasons to address those. What I just asked, I will yield time to Tamby. She has all of the particular details and aspects of hydrology and such. I am just asking for pre-existing nonconforming on the 4820 residence. It will have sewer. It will have electricity, gas. We will be there, and it is going to be good in the end. But this is painful. But I appreciate your help.

Clements: Thank you, Mr. Cassady.

T. Cassady: Ok, so I just have a few details. We were asked the question for the last hearing about some of these details that it didn't seem like they would be a use variance detail. Because now we are in to design variance. But this has to do with drainage. The house is 980 square feet just so you know for the record. It has 732 square inches of vent drains, and it would be required to have 627, so, its in excess of almost 17% of what it has to have. In addition to that we have from the City of Bloomington, where we have applied for the sewer. We applied for the sewer for 4820 last year. We had a discussion with them about the connection for 4830. She shifted the application from 4820 to 4830. They are both on the same service. They are 2 structures on one lot, and they have been on the same city water service because they are 2 structures on one lot. Her explanation to that today in an email back to me is that we already have water service for 4830 and it also serves 4820. I changed the application address 4830 and posted the payment to this location. She basically says that it is served on the same, just reaffirming that is it served on the same. Now, we had civils draw in our plan for them to have 2 separate sewer services and that is what the civil plans show and that is a plan that is approved up to putting in the sewer connection, but an application has not been submitted yet for that connection. We do realize that will be an application that has to be forthcoming. So, to conclude I just want to reaffirm what Randy said. It is really hard living with your yard being dirt for a year. At some point you just kind of get over it and you have to have some grass. I mean, I hope that I am entitled to have some grass and some plants because I planted 14 shrubs yesterday. So, just to kind of conclude I feel personally that Planning should have found this a recommend for approval because of the decision that was made in April to approve the use variance and that was by Board member Loftman, stating that elevating the improved the floodway in Clear Creek, leaving this house as is doesn't change floodway. Th net is a gain. Because we did describe that we had already put in those detention things. Mr. Cassady has presented sworn evidence that there are sufficient openings and I just re-enforce that, to relieve the hydrostatic pressure as it might occur. We haven't had a flood occur there in that house that we are living in. We have owned it since 2017. Part of Board Member Loftman's statement, he has already satisfied his understanding of that requirement. I am not willing to put in my motion that it be elevated. The net effect is to improve things. If the net effect is to improve things and to conserve things, I am comfortable with saying we should approve it for the very reasons that you said with the condition, which has been agreed to that it be connected to the sewer, that is critical. I think I made a motion and that was the motion that was voted upon. Therefore, I feel that our request to continue with this additional

structure as is and we are still presently living in it since we just got our building permit for the other, I think that should continue forward. I thank you for your time. Thank you so much. I am sorry for my frustration.

Clements: Thank you. Do members of the Board have questions for either Mr. or Mrs. Cassady?

Davidson: I do have a question. Thanks for the explanation. You have probably seen the 4 suggestions, the recommended conditions the staff has made. How do you feel about those? Are they doable, not doable? Can you address those for us?

T. Cassady: Well, the sewer is doable, of course.

Davidson: Number one is doable.

R. Cassady: Time constraints are what your issues run into because we are still waiting on an additional approval to come forth before we can do anything., from County Drainage.

Clements: From what? From County what?

T. Cassady: The Drainage Board.

Clements: So, would 60 or 90 days?

T. Cassady: I don't know. They have had it since April.

Clements: I see.

Davidson: Ok, that is Number 1. How about Number 2? Occupancy.

T. Cassady: So, Number 2 is no because that's the request that itemizes. We are requesting that it continue on as a pre-existing nonconforming structure. It was not identified as a DADU previously.

R. Cassady: The DADU came up when I was told I had to come back and do something to get the thing and then we got the building permit, so, I am not 100% sure. I am just following kind of what I am told to try to keep things moving. Because this has been a long time and it is ok, but we are the point where we got to make things right. I will just be quiet.

Daley: May I interrupt for a moment? Can you have whoever is in charge of this screen raise the recommendations up so they can be seen over the closed caption?

Clements: I don't think they can do that. It's a page.

Crececius: I can edit this. In just one moment you will see it.

Jelen: Also, just to clarify, are you speaking to the part underneath if the Board recommends

approval?

R. Cassady: Yes.

Jelen: Can you repeat what you mentioned about Number 2?

R. Cassady: Under what?

Jelen: Number 2.

R. Cassady: No.

Jelen: You are not going to sign an affidavit?

R. Cassady: No.

Jelen: Ok, that I don't believe was address as a deficiency in the DADU requirements.

T. Cassady: We are not requesting a DADU. We are requesting a pre-existing nonconforming, 2 residences on one lot. Because that is what it was before this whole thing started and they were both rental properties and they were both reasonably priced rental properties.

Jelen: I just want to clarify, I think we spoke about this back about a year ago, when the first structure 4830 was altered the lot lost its pre-existing nonconforming status, which is why we are here tonight.

T. Cassady: I understand your stance on that we are still making that request.

Daley: Isn't that what the Board overturned in our decision in April? That was my understanding.

Jelen: The Board tonight, we have a request before us for a Detached Accessory Dwelling Unit application. So, this is a discussion about having an Accessory Dwelling Unit on the property. If there was a discussion about having 2 homes on one lot and the one structure being considered pre-existing nonconforming that would have been an appeal of that decision that we made last year. That would be a different process.

R. Cassady: I would have known that in what way? Its ok. There is no sense in having a dialogue back and forth. We have now identified exactly what it is. So, we thought we were done in April, to be quite honest. We thought we were done and then came back.

T. Cassady: We were having difficulty understanding why they were requesting us to be here again because the application was not created by us. There was a conversation between Randy and the Planning Staff member, and the Planning Staff member created the application and then recently prompted a letter to go along with that application and then we were able to get our building permit.

R. Cassidy: We couldn't get a building permit until we did whatever we were told, and it is ok, I am just trying to get through it. I thought we were done in April. Obviously, this is.

Clements: I would just like to ask staff, I am sorry for the complication here and the kind of change in the order of things, but under 2, we are impowered as the Board of Zoning Appeals to eliminate that requirement, the record affidavit per Condition #55. We can void that recommendation of staff as the Board of Zoning Appeals, correct?

Jelen: Any of the conditions under Chapter 802 Condition #55 could be. You have the authority to say whether that could apply. We will say that the more conditions that don't, that are being waived or that you are granting a variance to, the further that is from the actual use as stated in the ordinance.

Clements: Yes, and how do we fix the idea that these 2 properties in their mind pre-existing nonconforming structures and in your mind, they are in a situation right now where they have an animal they don't understand, like a new house that is subject to zoning as well as a detached accessory dwelling unit that they never intended to have. How do we fix that?

Davidson: Appeal the determination that it was not a pre-existing nonconforming structure. You told us that is the way. I feel awful that it is 2 roads diverged in the yellowwood right here. What is before us, which is not going to fit because there are conditions they cannot meet because of this definition. So, it sounds like they are going to have to appeal the determination that they did not have a pre-existing nonconforming structure. Is that true?

Jelen: The appeal process allows 30 days from the time of that determination. What I will say is we can go back through the history and look at when we mentioned to the Cassidy's that that was no longer allowed since they altered the original structure. I can look at the date of that. But I will say that for the purposes of the request, I believe that the request tonight for the DADU is getting to the same end goal as what it would be if you would have applied a decision to have 2 pre-existing conforming structures. But the BZA if they grant a Use, they granted the Use Variance, if they grant variances to the DADU it would just be a legal structure. Now, if its damaged it would still have to go through requirements under 808 for following flood damage requirements but it's a legal structure, so, its not going to be pre-existing nonconforming. It would just be considered conforming, if granted these variances.

Clements: If we strike condition number 2, is that right, to my legal friends here, my attorney friends?

Davidson: We haven't gone through all 4 of them.

Daley: Let's here from the petitioner about there was a question asking them about all 4 of the conditions and their thoughts on them and we have only heard 2. So, let's hear what they have to say and weigh what we may or may not.

Clements: I also see that Ms. Owens has her hand raised even though I can't see it from here. Let me defer to Ms. Owens.

Owens: Thank you. Thank you very much. I have a question especially that was brought up with the Certificate of Occupancy, piece number 2 and that is that I heard the Cassady's say that they live at that property. But then I turned around and heard Mrs. Cassady say that they were 2 really good rentals. So, I want to know which is it?

T. Cassady: Well, one of my renters had a stroke last summer and he had to move out and we did not have a home. We sold our primary residence about a year before that so we moved into it so that we could work on the project to fix up the other house.

Owens: Ok, thank you.

Clements: I think the reason why they don't want to have to sign the Certificate of Occupancy is because they have used it as rentals in the past and they would like to continue using it as rentals in the future. Isn't that correct?

T. Cassady: Yes.

Clements: So, that is why item number 2 is problematic for them. That is why that is problematic for them. So, let's go down to item number 3 because we were asking you for your feedback on after-the-fact Floodplain Development Permit through Planning Department to review the driveway configuration and possible sidewalk work.

R. Cassady: I just need to have a timeframe that it needs to be done if that is the case. The only reconfiguration on the existing driveway is I put grass over the other one. I can have it back tomorrow. I was kind of instructed, well, if this is going to change you had to do that. Ok, we had 3 driveways on the properties. If you take one out it makes it safer. So, I just put grass over it. If someone wants it back, ok.

Clements: Staff do you have anything to add to that?

Behrman: Right, I would like to just say that under federal and state requirements that any development with any floodway requires a permit. We have observed that you removed a whole driveway. It looks like you are putting in a sidewalk, looks like there was a paved area to the street.

R. Cassady: Let's clarify so we don't have any issues.

Behrman: There has been activity and development that looks like it has been occurring and that requires a permit. Staff has not seen an application. I need to have state approval for some of the things that have been occurring and not been disclosed on the site.

T. Cassady: Do you have the permit that we got last year for the site?

Behrman: The Elevated Abode, yes. I have that. I also issued a local permit for your elevated abode. I did not issue permits for driveway reconfigurations or the other development that seems

to, there is nothing in writing, I have no knowledge of the storage and the fill that occurred on the site either.

R. Cassady: What storage? The water storage?

Behrman: Correct. I think it is a good step, but I have no knowledge.

R. Cassady: This is probably going to get a little personal.

Clements: Let's just not make it personal.

R. Cassady: When you go back to Number 3 the concern, I have is Tammy Behrman and the timeframe it will take for her to review it and either approve it or deny it. It is very simple on that it is specifically in Tammy's court and if I want to go back to the entire ordinance, what it is, the Floodplain Administrator is supposed to be the Director. That is per the Planning Ordinance.

Clements: In your idea how could that Item Number 3 be solved?

R. Cassady: I have to know what it takes to satisfy Tammy in requirements. I don't know. This has been going on for a long time and at some point, I have to say you tell me. I don't want to get this way. I am 60. I will be 61. I only have a certain window of time and energy to try to make this better and I will give you the 90 days, I will do Number 1. We are going to get sewer. Number 3, I am happy to get a Floodway Development Permit. But I really need to know what kind of realistic timeframe we are going to be working with, so I am just not set into a regulatory hold. We have been trying to rebuild Clear Creek for 5 years and we are still held up on ...

Daley: Madam Chair?

Clements: Yes.

Daley: Mr. Cassady?

R. Cassady: I apologize.

Daley: I have a question.

R. Cassady: I am going to step down and let her take it from here because this is not going to work out well for me long-term....

Daley: Mr. Cassady, let me just ask staff a question real quick.

Clements: I have one as well.

Daley: What is the presumed timeframe for Monroe County Planning Staff to review the driveway configuration, possible sidewalk work and issue a permit? What is the approximate timeframe?

Behrman: In order to issue a local Flood Development Permit in a regulated floodway, it requires a state permit.

Daley: A state permit.

Behrman: A DNR Permit. That is a requirement whenever you are working in the most restrictive part of the floodplain.

Daley: And you do a lot of work with them, and you have presumably done this on a number of occasions through your career, what timeframe does the state typically take? I understand we are not holding you to this. I am just trying to get a ballpark figure and also trying to divert some questions.

Behrman: A lot of it depends on how complete the application is and if there is a complete application filed, I feel like DNR has been able to get 3 months in.

Daley: 3 months, ok.

Behrman: But to me it looks like they are almost asking for an after-the-fact permit, so we just need to confirm that what they did is not going to be impactful and it is going to demonstrate No-Rise and comply with the National Flood Insurance Program for us to remain in that program.

Daley: In your best guess, with what you said does have to happen because of the after-the-fact aspect, 3 months would take us to the end of the calendar year, do you truly believe that is a reality?

Behrman: I don't know how complete an application would be. It depends on who they work with. They may need a hydrologist to issue a No Rise Certificate.

Daley: May I re-address the Cassady's?

Clements: Yes.

Daley: We are hearing that the process would reasonably take 3 months. What does that sound like to you?

R. Cassady: We did an DNR Permit previously without any issues, so I am really surprised that this is just another cog in the wheel that is just trying to stop the work.

Daley: I am trying to find a way to try to help make this happen.

R. Cassady: If the DNR Permit that was there doesn't quality on this site.

Daley: It apparently doesn't. I don't understand why but at this point we are talking 3 months. If we are looking at 3 to possibly 4 months is that a timeframe that you are comfortable with to

maintain this condition? Yes, or no?

T. Cassady: We don't have control of that because it is up to the state, and they do take at least 90 days. I have applied twice for the property across the street, and it does take that long, and it is the amount of time that it takes from that point to their approval. The situation is and has been in the past that the specific items are not identified when it goes to the state. It gets approved at the state and then not approved locally. It needs to be reviewed before it goes to the state and that cannot take along time. So, we need a finite list of items if we are applying for an after-the-fact driveway, right of way, whatever it is. It is not a sidewalk.

R. Cassady: There is no sidewalk.

T. Cassady: Sewer, that will have to be included in that Floodplain Permit.

R. Cassady: Sewer we are fine with.

Clements: Is this all because you are now in a situation where you are not a pre-existing nonconforming? Tammy? No?

T. Cassady: The floodplain is not. The Floodplain is because we are in the floodway.

R. Cassady: We went through the entirety in our permit. I have don't site surveys. I have done elevations. We have spent a lot of time and a lot of money.

Clements: Right but I just want to ask staff is this all because they are now in, not a pre-existing nonconforming?

Jelen: I would recommend maybe let's just talk out loud on what is being requested and maybe we can walk through this together. So, what we have on the screen is 4830, which is the elevated abode and that was the subject of discussion at the April meeting. That elevated abode has received proper permits and the work that is being done for that elevated abode can continue. The discussion tonight is about 4820 and its current status as a second dwelling on the property. So, my understanding is there is no exterior work or work being done to that structure because we don't have a specific permit for that structure. Is that correct?

(Inaudible)

Jelen: Ok, so the discussion tonight is to allow that 4820 to be existing on the property in perpetuity. That is the request tonight.

R. Cassady: We thought that was done in April. That is what we thought was done and completed.

T. Cassady: Because that was the Use Variance and then now, we have read in the fine print of the packet, which is the first time that I have been able to determine that this is a design standard variance.

Jelen: Yes. The Use Variance for 4830 and 4820, the property, allows you to, the ordinance would assume that let's say you just has one home on the property, that Use Variance would allow you to go ahead and build a new structure on that property. What you are asking for is to have the existing structure be counted as the DADU that you got a Use Variance for. So, because the design standard of that existing 4820 doesn't meet the standards of the DADU we are back to address here is how this 4820 does not meet the standards of the DADU requirements. If the BZA approves those conditions as variances and does not make that apply to 4820, then it can be considered a Detached Accessory Dwelling Unit and it has a Use Variance, so the use is permitted, and the structure is meeting all of the requirements with the variance approval.

T. Cassady: So, based on the language that was utilized for the motion in April, it did not identify that it was a DADU. It identified that it was a structure that we could keep as it was, and then this design standard variance came up, so it was like, oh, is this a gotcha? So, now we are going to add more requirements to it so that we can kick it into a DADU and that is not what we requested and that is not what was voted on. Now you are asking for that to be voted on. We are saying no.

R. Cassady: We just want to get it to a point where we don't have to have these discussions and come in on a consistent basis, just to try to do, rebuild a community in a brown field that quite frankly most people wouldn't get a d*mn about, tear down and move on. With this I am going to ask Jackie, I am going to ask Tammy, I am going to ask Anne, to cooperate and try to, if we have to change an ordinance, I will pay the ordinance fee.

Clements: This is the thing; the ordinance is not fitting this property because it is pre-existing nonconforming and the word DADU is not going to fit this property. The word DADU is not going to, you know, we have a problem with our upcoming ordinance that we are trying to retrofit modern terms on a county that isn't just a franchise operation of every other community that this consultant wants to make us fit into. This does not fit. So, our job here today is to make this fit and we have got ongoing things because of the floodplain. We don't want anybody to get hurt in the flood insurance. I know you share that, and I am just trying to think of how do we get around this with the rules that we have. Yes, Mr. Loftman?

Loftman: When you were with us in April were you requesting a DADU?

T. Cassady: No. We were requesting to keep the existing home the way that it was and so that in the event that we wanted to utilize it with our family members or to lease it in the future, we would be able to do so.

Loftman: Right and I remember the families thinking that it, and if you were going to rent it a DADU would be fine. But if you want to rent it, it can't be a DADU and that is the reason that you are uncomfortable with condition 2.

Clements: And also condition 3 has a problem. But Tammy, would you please, yes.

Behrman: I just wanted to, I pulled up the meeting minutes from April 7, 2023, and number 2, VAR-23-7 states that it was Cassady Use Variance to Detached Accessory Dwelling Unit in

Chapter 802. So, it was a Use Variance request.

T. Cassidy: But that was in the Planning Department's summary. That was in your definition, and we had our chance to speak and spoke and said that is not what we are here for.

Behrman: It was a letter that was submitted to Planning.

T. Cassidy: You have to put it into your mold.

Clements: And the mold is not fitting. That's the problem.

Jelen: I have some concerns if they are not consenting to the variance before the Board. I want to make sure. I can take a recess about talk with them about what this request is for. If you vote on something and you don't consent to that we even made this petition with your assistance, then I think we need to talk about how to proceed. Because I don't want you to apply for something that you don't think is fitting for the property.

R. Cassidy: If you get rid of all you guys recommended for approval except, we know we got to put a Floodplain Development Permit in to get the sewer.

T. Cassidy: And we have already agreed to do that.

R. Cassidy: And we have, and we are going to do it. We have to do it. Now, in order to put the sewer in, to do that, I have to cut the road. Well, unless we get approval, you know, so, what I am looking at is just asking the question, I am going to calm down a little bit, ok, it is not my nature, I suck at poker, ok, everybody knows pretty much how I feel when they look at me. From that, on the sewer capacity letter, we have got that. The physical connection to sewer, I am ok as soon as we get the approvals through to do it, we will do it. We will do it within 90 days of Certificate of Occupancy of 4830 but I can't even start until I know that this is either going to go or not go. Number 2 we discussed that depth. The Floodway Development Permit I honestly as I put this thought when I went through this all with DNR and Tammy that that was a done deal. So, that one kind of gets me. Because again now we are in a different timeframe, long-term, don't know. Number 4, yes, we are going to do that with the sewer, correct. So, number 4 we are good with. Number 1 we are good with. Its 2 and 3.

Clements: Ok, ok, I think that ...

Davidson: May I ask first of the staff, the issue of the DNR permit, that we have talked about with 90 days and so on, that the Cassidy's say they have worked on and worked on, what is the status of that? Is there a DNR permit for floodplain use in that area? Has that hurdle already been met?

Behrman: To my knowledge this property has an Elevated Abode permit from DNR, which allowed me to issue the local Flood Development Permit for the Elevated Abode and if we look at the site plan, perhaps Anne you could pull up the site plan for this site that was in the packet, I think you might have had it in there as well. That is the site plan for what was approved. It also

shows the house that is on the site there, the one that we are talking about tonight. There is a separate Flood Development Permit and state Floodway Permit for the sewer laterals for those to be allowed to be installed in the floodway. The sewer has not been built yet, which will be outside of the floodway and until that sewer line is built the sewer laterals cannot go in and be connected to the structures. What is missing in looking at the site plan here, staff has never heard about the driveway reconfiguration for the property. When we did a site visit it looks like they were intending to do sidewalks. Now we have heard differently but I will say that in the Flood Development Ordinance sidewalks and driveways cannot be made with permeable materials that would be coming back for another variance if you design them to be asphalt or concrete and I think I am seeing concrete out there.

R. Cassady: That's not concrete.

T. Cassady: There is no concrete out there.

R. Cassady: And there will never be any concrete out there. Just so you are aware there will not be concrete.

Clements: I wonder if we, as the Board of Zoning Appeals, have the authority here tonight to consider, ok 4830 is fine, do we have the authority tonight to 4820 and to define it as pre-existing conforming? Therefore, they don't have to be subject to these recommendations and these conditions for 4820. It is not a detached accessory dwelling unit. It is a pre-existing nonconforming building. 4830 is conforming now. Do we have the authority in our recommendations and in our vote to say 4820 returns to a pre-existing nonconforming building.

Jelen: I don't believe that it what is before you and I am not sure that is possible. I can pull up Chapter 803 to go over what the issue was in the beginning as to why it lost its pre-existing nonconforming status if you would like. But, again, the request before you is to allow it to become a DADU.

Clements: Ok, Mr. Daley.

Daley: I agree that I don't believe that can happen based upon what we have and that would be a whole another paperwork trail. If this gets approved as conforming at this point, if this variance gets approved, does that mean unless if we put in a caveat that the petitioner must get this DNR that they are in the clear at that point?

Jelen: The conditions....

Daley: Does this variance make it conforming, and supersede the state DNR need to have that?

Jelen: No, that condition is just saying that before you are granting the approval of the Detached Accessory Dwelling Unit, they need to get their local Floodplain Development Permit and the state permit. They have to do that regardless. So, either you condition it tonight...

Daley: So, whether that is a condition or not that is in here, so it is moot, number 3 is moot.

Jelen: Unless you want it to happen prior to structure being deemed conforming as a DADU.

Daley: Alright. I don't know at this point where I stand on that. So, regulation 3, recommendation 3 on there is just whether or not it is before or after. You still have to get it. That clears a lot of for me.

Clements: Ok, so we do need to hear from the public. If there are members of the public in the room ...

Loftman: I'm sorry.

Clements: Yes, Mr. Loftman?

Loftman: I'm sorry. Mr. and Mrs. Cassady, I am looking at the petitioner's letter in this packet and I read it as saying, this document for obtaining approval to allow the dwelling at 4830 as Detached Accessory Dwelling Unit.

R. Cassady: Straight on that and I don't want to throw anyone under the bus, that was written by the Planning Department and said here what do you want to put. I did it because I was told to in order to ...

Loftman: Let me pursue that. If you agree that it will not be a rental, that it will be a DADU, which is what I was sort of assuming when we were talking about this then all of these problems I think are easily solved. The problem as I see it and I understand you were trying to go along and didn't quite understand that meant you wouldn't be able to rent it out.

R. Cassady: It's not even the rental. It's not even the rental. I mean, at this point guys, tell me when you want me to tear it down. That's where I am at.

Loftman: Ok, it's not a rental-able property.

R. Cassady: It is. It is. It was. Scott Morgan, who ran the Monroe County Solid Waste was renting it until he had a stroke.

Loftman: Ok, so the issue it seems to me is if you all accept that it is a DADU, which you did seem to accept because that is what your letter says.

R. Cassady: We are ok with the DADU. I just don't need recommendations and deed restrictions on us.

T. Cassady: When you are told you have to be here and you need a letter and this honestly, I tried to leave this in Randy's court and Randy is a very busy guy who lost his mother about a year ago and it has been enough to try to handle everything else.

Loftman: Ok.

T. Cassidy: So, we are here because Planning wants us to be here so could proceed and try to keep going with the house.

Loftman: What you didn't understand until tonight was that the DADU meant forever, that you thought you would use it for your family, but you also thought you could rent it. But now you find out you can't have it both ways. Either you got to say it is just for family or it's a rental. What is before us is family. If we grant this, you can proceed to do anything you want to except rent it out. If you want to rent it out in the future, I think you would have to start a whole new procedure, which I don't know if it will ever work. But I do know that from my perspective there is a very substantial chance that you can get approval from me tonight if you say it is a DADU, which is what you said you were going to ask for.

R. Cassidy: I just want to get rid of the conditions.

Loftman: But one of the conditions of the DADU is that you sign that affidavit, that you can't have a DADU without that affidavit.

Clements: We could recommend, we could remove that recommendation.

Loftman: But then it's not...

Clements: It is still nonconforming but is less conforming than it was before.

Loftman: So, thank you.

Clements: DADU doesn't apply to them. We have got these terms that are not fitting their situation because it has been pre-existing nonconforming for a long time.

Loftman: I understand the catch 22 that no solution fits the problem.

Clements: Right.

Loftman: And if they were comfortable signing the affidavit for a DADU then we could work around and then they could do that, and these other things can go away. But I hear other people on this Board saying we don't need to make it a DADU we just need to make it a permitted nonconforming use, which was, and I don't object to that. It just seems to me we are, and I didn't know that was what we were talking about.

Davidson: But the staff said we really can't do that. We really cannot do that.

Jelen: What is before you is to grant a variance from Condition #55, which is including that affidavit. It includes the 5 acre minimum. It includes that they meet all building code, electrical, residential code, it includes everything and just to clarify the affidavit isn't that you have to live in the DADU, its that live in the DADU or the primary structure on the lot. So, if you were living in 4830, you would still be compliant with that affidavit.

T. Cassidy: That is not what I read in a previous packet.

Clements: But we could eliminate that requirement. As the Board we could say the Board of Zoning Appeals recommends approval with the following conditions, then we could omit that condition.

Jelen: You could. Right, yes. That is Condition #55 is what is of discussion. So, some of these conditions, I think Number 2; record an affidavit per Condition #55 is because I think we weren't sure that they were going to live on the property to begin with so that is one portion of Condition #55 that if could be met would still stay with the intent of the DADU requirement, which is that it is owner occupied and then one accessory dwelling unit.

Davidson: So, it could be complied with.

Owens: Could I ask something as well, please?

Clements: Yes, Ms. Owens?

Owens: Thank you. Back to the Floodplain piece, which to me originally it was my biggest issue, were they told, I don't have access back to the April 5th meeting minutes, but were they told that, or was it made clear that the state permit would need to be worked out at that point in time or at any point in time was it noted that that flood development plan had to be put into place?

Jelen: I think the question, Dee, are you saying the Floodplain Development Permit for the elevated abode, which we say in April or are you asking about the new work that has been done since?

Owens: For the new work. Because I understand that. There are federal requirements when you are sitting in the floodplain. It is just the way that it is. There are state requirements. That is just the way that it is. The first, the 4820, that was discovered, that was deal with, DNR, all is good. Now, for the new one, have they been told or were they told at all before tonight as far as these are some of things if we do approve that we should do as the BZA? Is this new information to the Cassidy's that they got come up with that? Because that is on of the things that was discussed in our paperwork is that they didn't do it. Did they know that they were supposed to do it and if so, when did they know?

Behrman: I think that we didn't know that they were planning to remove a driveway and do what appears to be sidewalks and it was a shock when we went out and did a site visit and saw that work had been done that had never been disclosed on any of the permits, which is why we would like to know what it was, what the full intent is for the property and just have that documented so that when I am audited by DNR to confirm that we are complying with the federal regulations so that we can stay in the flood insurance program, that I can prove that and have those permits documented.

Owens: Right and that is absolutely important for the entire county, not just this property. Thank you.

Jelen: Just to follow-up on that Dee, staff made a site visit on September 28th, which is days prior to today. The packet went out that day that the site visit was made with this information in it, so that was the soonest that we saw that the work was done and that was when we communicated in the packet. Now, I don't know if the Cassady's came to the office to talk to us about it or not.

R. Cassady: Anne was gone, and you were.

Clements: Randy.

R. Cassady: I really tried. Ok, so, timewise all I want to know at this point either, I am ok with the DADU, screw it, I am ok with the DADU. We will do a DADU if you can remove the conditions. Its ok, I am going to tear it down, when it is all said and done, heck with it. I was told I was probably going to have to remove a driveway and my wife wanted grass. To be quite frank. I had Georgia walking out at the rental next door that we own. Looking around. Chandler, their son, lost a ball in it. So, I filled it, and had it taken care of to make sure it was all safe and permeable. So, I apologize, I really do. D*mn it, girls, work with us to get something done, please. I am ok with the DADU. I am ok with whatever conditions you set but I will walk out of here tonight and either know that we can make something better or we can't in a timeframe to realistically work with. Because we have had time for a year, and we have been working on this project for 5 years. So, I apologize. Please approve (inaudible).

Daley: Point of order. We need to hear from the public.

Clements: Yes, we need to hear from the public. If the public is here and would like to speak on this issue, either in favor or in opposition, please come to the podium, please raise your virtual hand on zoom or please press *9 on your telephone in order to weigh in on this issue. Let me know if you see anyone. We don't see anyone. So, coming back to the Board of Zoning Appeals, is there any further discussion and/or a motion?

SUPPORTERS – VAR-23-23 – Cassady: None

FURTHER SUPPORTERS - VAR-23-23 – Cassady: None

REMONSTRATORS - VAR-23-23 – Cassady: None

ADDITIONAL QUESTIONS FOR STAFF – VAR-23-23 - Cassady

Davidson: The frustration is palatable. Please understand that the changes go with the property not with your ownership so we have to look at a long view and the fact that there are the federal rules about the floodplain, what can we do about that except comply and do those things. As I listen to you, if you are ok with the DADU then these restrictions really ought to work. They ought not to work. But I would suggest that because there are particulars about that the Cassady's sit down in the next few days with the staff and go through this, this and this is what we need to do for these conditions so that we have a meeting of the minds and we don't, your frustration is you have returned since April and you feel it was decided but it was not. So, maybe

the staff flushing out the details along these lines of recommendations, that makes our vote much more solidified.

Clements: Here is what I, where I am on this and I don't know how other members of the Board of Zoning Appeals feel, but I am inclined to recommend approval without any conditions. Because the Cassady's are going to meet the conditions and let's just let them get it done. That is the fastest way to get the conditions done. Now, I would, of course, ask the Cassady's to sit down with Jackie and Tammy and say, ok, how can we avoid trouble going forward and let us know now so we can get it done and let's get all of these things done in compliance so that we can get that Floodplain Development Permit after-the-fact. But let's just, I am saying let's just approve it without conditions. Because they are in a (inaudible) situation. I don't know how other people feel about that, but I am ready to.

Loftman: I am sympathetic to that.

Clements: Are you sympathetic? Is anybody else?

Davidson: I am concerned that going forward when the Cassady's are no longer residents then this issue will come back around because it won't be a DADU, and it won't be nonconforming pre-existing condition. It will be something else.

Clements: They will have it all met.

Daley: I remember as testimony they plan to own that for life and that will be his testimony in April. I am interested in actually making a motion with a recommendation condition number 1 for the 90 days.

Clements: For the sewer capacity letter?

Daley: Yes. So, I without....

Clements: With that I would just like to say in terms of our standards variance concerned, that we believe your sworn testimony that you are going to ensure that you meet the floodplain requirements so that we don't place our community in hazard. You are going to work with Tammy and DNR and you are going to get certifications. It is just all of this timing stuff that is preventing you from meeting it. Ok, so you are going to work with staff to get that done. Therefore, the Use Variance will not be injurious to public health, safety and general welfare of the community and that 2, the use and value of the area adjacent to the property will actually be improved in a substantially better manner. Because you are taking a pre-existing nonconforming and you are turning it into something that fits into that neighborhood, and you are going to take care of the issues that we have discussed tonight and that the need for the variance arises from some condition peculiar to the property involved. That certainly is true. Because of the discussion that we had of the pre-existing nonconforming use issue, and you are in this mess because of all of the technicalities that you are going to be resolving going forward and that the strict terms of the zoning ordinance constitute an unnecessary hardship. You have described it tonight if applied to this property and that the approval does not substantially interfere with the

Comprehensive Plan and I feel that those conditions have been met. Do you have any objections to that Mr. Daley, with your motion?

Daley: I don't object to that but were those the standards for?

Clements: Those are the 5 standards for a Use Variance approval that have to be met.

Daley: But is this a use? I thought this turned into a design.

Jelen: This is a Design Standards Variance.

Daley: This is a Design Standards Variance.

Clements: This says here 812-5, Standard Use Variance approval. In order to approve a Use Variance. Is that a type-o?

Jelen: That is a type-o. I apologize.

Clements: Ok, so for the Design Standards Variance then.

Jelen: I think you quoted the right criteria though.

Clements: Ok, the criteria are included. So, I think they still apply.

Daley: I agree that the standards are reasonably addressed. I would like to make a motion for approval with the condition that the sewer capacity letter be provided to staff under an Improvement Location Permit 90 days of the issuance of the Certificate of Occupancy for the address on record.

Davidson: Nothing about the DNR Permit for the floodplain? Nothing about that?

Daley: If this gets approved, it becomes compliant and the DNR permits are necessary before the work is completed by state statute which is what we were just told. So, it is moot for us to put this in and to have them require that prior to moving forward. That is my stance on this. It has to be done but does it have to be done before we call this compliant, no.

Davidson: Is Mr. Daley's conclusion correct about that?

Jelen: I will just go over what the next steps would be if a design standards variance was granted tonight. So, after tonight we would ask that the Cassady's apply to reclassify the structure, 4820, as a Detached Accessory Dwelling Unit, so that would be an Improvement Location Permit to change the classification of the structure to become a DADU. If you are waiving the conditions of Chapter 802, Condition #55, then there would be no other requirements before we could issue that permit. If there are any conditions such as a sewer capacity letter or an after-the-fact Development Floodplain Permit, we wouldn't be able to issue that Improvement Location Permit at that time. Now, regardless we have to do a Floodplain Development Permit on this lot. The

question may become whether that work that was done without a permit, bumps it into a category of enforcement in that we wouldn't be able to issue any further permits until that is rectified. That would be a question for legal. But we did put it into this as a condition just for clarity's sake to say this will be required. But we in no way mean that the BZA has the authority to waive that requirement because that is a requirement outside of this Condition #55. Does that make sense?

Davidson: They don't look happy. They don't look happy. This may not work.

T. Cassady: If we are not here to apply for that, why would you have us submit another DADU application?

R. Cassady: You are asking for another (inaudible).

Clements: I am just ready to go up to Indianapolis and submit the application myself.

R. Cassady: What permits do you need? What's the procedure and what is the timeframe?

Jelen: You have a permit for 4830 South Rogers Street, an elevated abode as a single family residence. What we are saying tonight is if there is a design standards variance for a DADU then we would be able to issue a permit for 4820 South Rogers Street as a DADU and convert it. Then 2 structures you have on the property both have permits.

R. Cassady: (Inaudible) I have been told consistently that I can't ...

Owens: I'm sorry, can I interrupt? I cannot hear Mr. Cassady.

R. Cassady: I'm sorry. Dee, can you hear me?

Owens: Thank you.

R. Cassady: Ok, again we are back to a timing issue and procedurally. I need to come in apply for another Improvement Location Permit. Is that what I am hearing?

Jelen: If there is no permit on file 4820 South Rogers Street, we could do what is called an Improvement Location Permit General, which is a very simple application which is what we use for all DADU's to basically show that it is a Detached Accessory Dwelling Unit. It is not a guest home. It is not a 2-family dwelling. It is a Detached Accessory Dwelling Unit and that is what we would classify it as.

R. Cassady: Ok, so if we do that, if we get rid of the condition I am back into timing and revolving door here. Here is the problem I am running into. So, if we do that and we get rid of Condition 3 with the affidavit, we are ok.

Jelen: Condition #2 with the affidavit, you are saying you don't want to have that. The request before the Board of Zoning Appeals is a Detached Accessory Dwelling Unit and you would like

to, as I understand it, waive all of Condition #55. So, that would be no affidavit, no 5 acres, not meeting building code, all of the items that are listed in the staff report, you are asking for he BZA to waive that?

T. Cassady: So, that application is why we are here. Then why does the decision tonight require yet another application for the same?

Jelen: This is the application for a variance not an application for a permit.

T. Cassady: Will that application be accompanied by a packet and a hearing?

Jelen: No.

T. Cassady: Thank you.

Daley: Who determines whether or not there is an enforcement issue?

Jelen: Based on the ordinance if there is action taken that is not consistent with the ordinance then it is an enforcement action that can be taken. But if we...

Daley: Who makes that determination? Is that County? Is that you guys?

Jelen: Yes, if there a violation of the zoning ordinance what we do is we reach out to the person, we give them a chance to go ahead and apply for any after-the-fact permits that are needed. But if there is not cooperation or if there is not movement to get towards compliance then it could be further enforcement action with the legal department.

Daley: Do you guys have an intention of creating an enforcement effort with this property if this were to get approved?

Jelen: I think that they are going to work with us to get the proper permits for the floodplain. Is that the question?

Clements: Mr. Loftman?

Loftman: I am considering moving, I am not moving, I am considering moving that we approve VAR-23-23, no conditions. I know they are going to put a sewer in as soon as they. Nobody wants to not have a sewer. They are going to have to work with the state.

Clements: Make the motion.

FURTHER QUESTIONS FOR STAFF – VAR-23-23 - Cassady

Loftman: **I move that we approve VAR-23-23, without conditions.**

Clements: I **second** that.

Daley: Does that, may I clarify? Does that include waiving all of the 55 with the affidavit?

Loftman: **Right, without any requirement for conditions 1, 2, 3 or 4. We are just approving VAR-23-23.**

Clements: Ok, so I **seconded** that. Let's just call the roll.

Jelen: Ok and I will just clarify for the record. This is a vote to approve VAR-23-23, a Design Standards Variance from Chapter 802 to Condition #55, Detached Accessory Dwelling Unit. A vote in favor is a vote to approve this variance waives all of the required conditions under 55. I will note thought that some of the conditions stated in the staff report still may need to be completed just not prior to us being able to move forward with this structure 4820 South Rogers Street, being classified as a Detached Accessory Dwelling Unit. Just for confirmation. We are happy to work with the Cassady's on that. This will not hold it up from being permitted. A vote in favor is a vote to approve the variance without any conditions. Guy Loftman?

Lofman: Yes.

Jelen: Dee Owens?

Owens: No.

Jelen: Pamela Davidson?

Davidson: No.

Jelen: Margaret Clements?

Clements: Yes.

Jelen: Skip Daley?

Daley: Yes.

Jelen: The variance is approved 3 to 2.

The motion in VAR-23-23, Cassady DADU Condition #55 Variance to Chapter 802, in favor approving the variance, without any conditions, carried (3-2)

****Guy Loftman left the meeting at 7:04 pm*****

NEW BUSINESS

2. VAR-23-34

Watson Minimum Lot Size Variance to Chapter 804

One (1) 0.64 +/- acre parcel in Polk Township, Section 20 at 6420 E Allens Creek RD, parcel #53-12-20-200-004.000-010.

Owner: Watson, Shawn

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

BOARD ACTION: Clements introduced the petition.

STAFF ACTION: Petition has been continued by staff.

NEW BUSINESS

3. VAR-23-35

Topoligus Residential Storage Structure Size Variance to Chapter 802

One (1) 4.59 +/- acre parcel in Polk Township, Section 16 at S State Road 446, parcel #53-12-16-400-018.000-010.

Owner: Topoligus, James

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

BOARD ACTION: Clements introduced the petition.

STAFF ACTION:

Smith: The purpose of this design standards variance is to construct an approximate 4,800 square foot Residential Storage Structure at State Road 446. The proposed location meets all setback and buildable area requirements. But the size of the structure is limited to 1,750 square feet and this come from Chapter 802-5 (D) (1), which defines a Residential Storage Structure as a structure to be used for private, noncommercial storage by the property owner. It does not require the presence of a principal use on the same lot. Structures shall not exceed 1,750 square feet in the AG/RR, FR or CR zoning districts and 875 feet in all other permitted zoning districts. The purpose of the Residential Storage Structure use is to allow for a storage building prior to building a principal use on the property. The ordinance limits the size of the storage structure which can be designed as a detached garage, it can be designed as a pole barn so that the land will be utilized for storage purposes as an accessory to a principal use. For example, whether that's a residence or it is being used for agricultural purposes instead of only being utilized for storage. These are the location and site conditions maps. Note that on the site conditions map all of the red areas consist of non-buildable area. These are just some aerial photos directional west and east. These are just some site photos of the general area. This is the petitioner letter to the BZA as well as the plot plan that was submitted to staff. These are also included in the packet, and I can always come back to them. Staff did receive some additional items that were emailed to us earlier this morning. I have included handouts to the Board of Zoning Appeals members, and I have also emailed them to Dee Owens. I can always come back to these screens if need be. This moves us to the staff recommendation of VAR-23-35, Residential Storage Structure Size from Chapter 802 and the staff recommendation is denial. This motion comes strictly from the practical difficulties having not been demonstrated due to the strict application of the terms of the zoning ordinance. Just for clarification purposes, if the design standards variance is approved the petitioner will be able to continue with their Residential Accessory Structure Permit, which is noted as R-23-913 and comply with all building and zoning code. However, if the design standards variance is denied, the petitioner will not be able to construct a residential storage structure beyond 1,750 square feet or the petitioner will be required to propose another principal use on the lot concurrently to remove the square footage limitation of the building.

CASE NUMBER	DETAIL	RECOMMENDED MOTION
VAR-23-35	Residential Storage Structure Size from Chapter 802	Denial

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

C, listed after the agenda within the BZA packet.

Recommended Motion Conditions or Reasoning:

Deny the residential storage structure variance: Practical difficulties have not been demonstrated due to the strict application of the terms in the Zoning Ordinance.

QUESTIONS FOR STAFF – VAR-23-25 - Topoligus

Clements: Ok, thank you Mr. Smith. Does any member of the Board have questions for staff? Mr. Daley?

Daley: I do. When I was reading this over, I never understood the methodology behind the 1,750 square feet. So, help me understand that so that I can put this in a little bit of an easier perspective, please.

Jelen: Sure. Actually, on page 16 of the packet it does have a little bit of a description on there. I am just going to read it out loud. The purpose of the Residential Storage Structure use is to allow for a storage building prior to a building a principal use on the property such as residence on the property. The ordinance limits the size of a storage structure which can be designed as a detached garage, pole barn, etcetera so that land will be utilized for storage purposes as accessory to a principal use instead of only being used for storage. If we have a residential lot and we allow for unlimited square footage of storage with no residence on the property, that's utilizing a property that is residential in nature as more a convenience storage location for the petitioner, for the owner. We try to limit that because we know that it is better to have people actually live on the property and are able to watch the accessory structure and make sure there no, there could be crime that occurs to that structure because no one is living there. There could be what is the limit if not 1,750 square feet. Could someone have 15,000 square feet of storage structures without a residence? Those are some of the questions.

Daley: Thank you. That was helpful hearing it. My follow-up to that is how close is the closest neighbor, residential neighbor?

Jelen: We could look at Elevate. Do you want me to pull up Elevate on the screen?

Daley: If you are having difficulty pulling that up, I am sure we could get that information from the petitioner when they testify.

Jelen: Here is Elevate GIS on the screen. There are, it appears to be residences across the street. Would you like me to measure? It looks like it would be within maybe 750 feet of where the structure would be located. There would be a residence within that proximity.

Daley: Could you reduce that a little bit so I could see? Alright, thanks.

Davidson: May I ask a question? Didn't I read in the materials that a residence is planned to be built on this property or am I dreaming that?

Smith: Sorry, one more time.

Davidson: Are they planning to build a residence on this property?

Smith: Initial discussions with the property owner's builder indicated that there were no initial plans to build a home. I think the petitioner whenever they would like to come up and speak and have their 15 minutes, I think that maybe they wanted to address some of those concerns.

Clements: Does Ms. Owens have any questions?

Owens: No, I do not yet. I did want to know about the living on the property, so, that is covered. Thank you.

Clements: Thank you. If the petitioner or the petitioner's representative would like to come to the podium and sign in and then we will swear you in. Would you please raise your right hand? Do you swear to tell the truth, the whole truth and nothing but the truth?

PETITIONER/PETITIONER'S REPRESENTATIVE – VAR-23-25 – Topolgus

Topolgus: Yes.

Clements: Could you please state your name and then you have 15 minutes to testify about this?

Topolgus: I am like frazzled from the past hour and half. Sorry. I don't know how all of you guys have been handling this. Anyway, my name is Sarah Topolgus. I am here representing the landowner of the parcel that we are talking about, that is my father. I have got the Power of Attorney for him, and I do all of our family's dealings, business dealings, anything financial, real estate anything like that and I am also representing my family limited partnership. It is called Topolgus Investments. It is the next parcel over. I am the managing member of that entity. So, I am here representing both parties. When I talk about this it is really the whole family. We are always together on what we are doing. But we are talking about 2 different parcels here. One is under m father's name, and one is under my family limited partnership and, but I am representing both. I am here for both parcels. What we are trying to do, this was 500 acres of land down by the lake. If you go down 446, turn right on Allen's Creek Road and it is I think more than 550 acres and it goes straight down to the lake. My grandfather started purchasing this property in the 1940's gobbling up little contiguous, little, small plots of land or different acres from people that lived down there, and they didn't want it anymore so they would just sell. He as trying to create one, big, contiguous piece of land. Then my family we just sold part of that and that is what one of these maps is. We just sold 360 acres to the Hoosier National Forest, and we kept 160 acres. That is what that first map is. You can see to the left is what the Hoosier National Forest bought and then the remaining area that I have. The second map over shows this little bump out and that is the 4.5 acres that we are talking about where I am trying to build this storage facility. The purposes of these maps are just to show big the land is and then compare it to the smaller spot. But it is all contiguous. Basically, what is going is we own 2 parcels of land. The big one for 160 acres and a smaller one that is 4.5 acres and right now currently I am allowed to build a structure, a storage structure of 1,750 square feet on one parcel, the smaller one and I can build another one the 160 acres. So, I am allowed to build 2 because I own, well,

not me, but together, the family, we own 2. So, what I am asking here today for the variance is can we build one on the little bump-out piece of land instead of building 2 different structures. One reason why it is problematic for me, and my family is in the bigger plot of land where is it 160, that is all forest and it has been forever. On the smaller plot, the 4.5 acres the trees have already been cut down and it was referred to as a “borrow pit” where when they were building the highway there, 446 and then to Allen’s Creel Road they scoped up the land and filled in the edge. So, it is like we were allowing them to use the land then spread it to distribute the way that they would build the highway. So, all of these trees, the forest has already been cut down. So, that is why we are trying to place this storage unit on the parcel where the trees are gone. The trees have already been removed. So, what I am asking for is, I am allowed to build one structure where the trees have been removed, I am allowed to build another structure where it is forest, and I don’t want to cut those trees down. It is going to be expensive to cut those trees down and I don’t want to cut the trees down and I also don’t want to build a second structure. Why build 2 when I can build one together? That is basically what I am asking, what the variance is about. Instead of having 2, 1 and instead of chopping down a bunch of trees and clearing space then just build a larger structure over on the part where the trees have already been removed.

Clements: Thank you Ms. Topoligus. Do members of the Board have questions? Yes, Ms. Davidson.

Davidson: Any plans to build a house on that property? Why do I think that I read that somewhere?

Topoligus: Well, I don’t think it is my written notes but here is kind of how this whole thing evolved and I do have an answer in the end that might help with this whole thing. When we applied for this and we just went to the Building Department and said, hey, can we build a storage unit down here. We are trying to put all of the equipment that we use to maintain this land and the answer was, yeah, sure. Of course, you can. Then it goes to Planning and Planning gets back to us and says yeah, you are allowed to build one for 1,750 square feet. You are not allowed to build one any larger than that. If you want something larger than you are going to have to come here and get a variance approved. Please tell everyone why you need a variance. My answer to that is we have got a lot of stuff, machines and that is what map number 3 is. We have a lot of machines and equipment and tools that are used to maintain the 160 acres of land. Actually, there is a list of them on there. A mower trailer, a tractor, a bush hog, a dump trailer, atv, a log splitter, welder, mower, I mean there is just a lot of large machinery/equipment that we have spread all over Bloomington in different places and we are just trying to combine it all into one spot. So, that was Step Number 1. Then after going through, I have spoken with Shawn several times on the phone and we have gone through different materials and I am like, oh, well, now, today at 4 o’clock I finally realize that we could have applied and just had residence this whole time. Instead of building the barn as a storage unit we could build the exact same barn int eh exact same spot and if we put a toilet and kitchen and a bedroom then it officially would be a residence and we wouldn’t be asking for a variance, and I would have any square footage requirements.

Davidson: But then you wouldn’t have a shed to store all of your equipment.

Topoligus: Well, I mean, that is the whole thing. Now it has got to come back to me of ok, let's redesign the barn and in my mind, I don't know, I have got me 2 builders right over there. We haven't even gone over plans like that. But in my mind, we could have a lower level where we have got everything stored and then on an upper level have a couple bedrooms and a kitchen and a toilet. To me toilets are good anywhere. I am not particularly one for going out in the wilderness, but I would be thrilled to have a toilet inside this barn and if I have to call it a residence to get the toilet then maybe that is going to be how that goes.

Clements: Mr. Daley?

Daley: Where are you currently storing all of this equipment?

Topoligus: In various locations around the town. We drive it down there.

Daley: The answer I was hoping, well, not hoping to hear but I thought I was going to hear was it is not on site obviously because it has to be in a building locked up, most of it at least, has to.

Topoligus: Yes.

Daley: So, there is an economic difficulty of having to maintain these 166 acres for which you have been a steward of our environment. Is that correct?

Topoligus: Yes.

Daley: And you have to go out of your way and have a difficulty having to go out of your way to bring this equipment and this machinery onto the site in order to maintain it. Is that what I am hearing from you?

Topoligus: Yes. We are trying to just have something on site where everything is consolidated, contained, under a roof.

Daley: You are good. You answered my question. Thanks.

Clements: Do you have any objections to putting a toilet, a bedroom and a kitchen in there?

Topoligus: No, now that I know. This has been a couple of months. I am sorry to say had any of us even known that those were the requirements we would have just applied that way. So, no I don't think we have a problem with it.

Clements: That would solve a lot of things for us. Because one we permit a noncompliant structure then everybody wants that. I don't know what to do at this point, except to make it subject to a residence.

Jelen: A variance would not be required if a residence was present on the site.

Davidson: That is right, so it really is factually up to you if that is going to be your intent or not.

Because if that is your intent you do not need this.
Clements: You could withdraw it.

Topoligus: I think the point is, well, one of the discussions today was come forward, present this information to you. If it is denied, tomorrow go back to Planning and reapply as residential.

Clements: That would be so much better for us.

Topoligus: Ok.

Clements: It would be so much better for us because. Yes, I would like to ask staff while we are at it, are there any independent free-standing 4,750 square foot storage units in the county?

Jelen: I am not sure. I would have to look into that.

Daley: Well, I would follow that up with are any other 166 acre forests that are in the county that would require that?

Jelen: If it was a structure that was solely used to have equipment for maintaining the land, let's say it was only like mowers, and other agricultural equipment, there could be an exception to that because obviously we have agricultural farms that do not have a residence on them that have storage structure barns. But I believe the image that you provided which is helpful to kind of detail why you need that size includes items like boats and atv's which obviously you are able to store those items but that kind of kicks out of the classification of being solely for the maintenance of that type of property. We apologize if there was any miscommunication on the ability to have a residence on there to get rid of the storage structure size limitation but that certainly is an option to you. But if granted the variance tonight you wouldn't have to put a residence on the property. You could just build the storage structure.

Topoligus: A storage structure with residential items to pass to get the building, I am just trying to get the building permit. I am trying to get a permit to be able to build.

Daley: Does the property abut to water?

Topoligus: No, not the portion that I own anymore. But on the property, there are 5 ponds that is why there is a boat.

Daley: So, there is a john boat there to maintain the water.

Topoligus: Yes, I mean you can't believe what the beavers cut down and you are in the middle of the lake and have to go do something before the dam floods.

Jelen: I will just mention just because it may delay your timeline, if you do not have a septic permit already into the Health Department, that can take several weeks. So, if you want to add a bathroom and other plumbing to the property you will have to have that septic permit. I think if you want to have the question before the BZA about having the storage structure without a

residence aka no plumbing needed, then that is still a valid question for them to vote on. If you want to withdraw your request and build a residence on that, please note that it may not be tomorrow that we could issue you a permit because you still have to have a septic, you have to go back to the drawing board in creating a residential space that has to meet building code, certified plot plan and there are some other conditions in there that will not make this immediate.

Topoligus: I hear you. I have no idea if there is a septic permit on this smaller spot, the 4.5. I know there is a septic permit on the 160. I don't care. I don't want to build 160 because then I have to tear down the forest to do that. Do either one of you want me to have a vote? Do you want to move forward tonight or wait and see what happens?

Daley: I think Board Member Owens has her hand raised.

Clements: Ms. Owens has her hand raised.

Owens: Thank you very much. What I am hearing here is somebody who is an excellent steward of a large amount of land that needs a big building to store all of their toys. I have been in that boat too wondering what I was going to do with my junk in my case. If there is no further discussion, I have a motion.

Clements: Well, we do need to hear from the public.

Owens: Ok, then I will wait. Thank you.

Clements: If you are finished with your testimony, Ms. Topoligus, then we will hear from the public and if there is anybody who argues against what you are proposing you will have an opportunity to come back. Ok, thank you. Are there members of the public who would like to speak either in favor or in opposition? If you are in favor or in opposition, please come to the podium, raise your virtual hand on zoom, or press *9 on the telephone in order to be recognized. Ok, we don't see anyone, so I think we are back to Ms. Owens for a motion.

SUPPORTERS – VAR-23-25 – Topoligus: None

FURTHER SUPPORTERS - VAR-23-25 – Topoligus: None

REMONSTRATORS - VAR-23-25 – Topoligus: None

ADDITIONAL QUESTIONS FOR STAFF – VAR-23-25 – Topoligus: None

FURTHER QUESTIONS FOR STAFF – VAR-23-25 - Topoligus

Very good. Thank you, Madam Chair. **In the matter of VAR-23-25, Topoligus Residential Storage Structure Size Variance, in spite of the staff recommendation, of course they have to follow what the law and the rules are, I would like to recommend that we approve that variance for Section 16, South State Road 446.**

Daley: I would like to add to that motion if you will allow me to, Ms. Owens, **that practical difficulties exit solely from the basis that size larger than 1,750 square feet are required to house the machinery and the equipment required to maintain the acreage that is in question.**

Owens: I would happily **accept that as a friendly amendment.** Of course, the rationale is that good stewards of forest do not want to cut down a bunch more trees in order to meet a standard that can easily in this case be justified in change. Thank you.

Daley: I will **second** that motion.

Davidson: May I just ask a quick question? We have heard from no neighbors complaining about this and they got a notice of this possible structure?

Smith: No.

Davidson: Ok, I just wanted to confirm that.

Clements: They are their own neighbors.

Davidson: Well, there are people across the street.

Clements: Ok, so if you would call the roll.

Jelen: Just to have a clarifying question to the motion. Is it to allow for an Accessory Structure size of 4,800 or are you just waiving the 1,750?

Owen: To allow 4,800.

Jelen: Ok, limit it to 4,800.

Owens: A 60 by 80 building.

Jelen: Sorry, what was that Dee?

Owens: It's a 60 by 80 building. It would take a 60 by 80 building to get all of that equipment in, without a doubt.

Jelen: Yes. Ok. The motion is to approve VAR-23-35, Topoligus Residential Storage Structure Size Variance to Chapter 802 and this is in relation to a residential permit, R-23-913, which is a request for a 4,800 square foot structure located om the property without a principal use. A vote yes is a vote to approve the limitation being upwards of 4,800 square feet. Guy Loftman? Sorry. Dee Owens?

Owens: Yes.

Jelen: Pamela Davidson?
Davidson: Yes.

Jelen: Margaret Clements?

Clements: Yes.

Jelen: Skip Daley?

Daley: Yes.

Jelen: Motion is approved 4 to 0.

The motion in case VAR-23-35, Topoligus Residential Storage Structure Size Variance to Chapter 802, in favor approving the variance to allow the structure to be 4,800 square feet, carried unanimously (4-0).

NEW BUSINESS

4. VAR-23-36a

Southern Minimum Lot Size Variance to Chapter 804

5. VAR-23-36b

Southern Minimum Lot Width Variance to Chapter 804

One (1) 2.0 +/- acre parcel in Indian Creek Township, Section 4 at
7525 S Mt. Zion RD, parcel #53-10-04-400-004.000-007

Owner: Southern, Alverta

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

BOARD ACTION: Clements introduced the petition.

STAFF ACTION: Petition has been continued by staff.

REPORTS:

Clements: I don't believe we have any other items on the agenda. I want to thank the public tonight for your patience, your perseverance and I want to thank staff for doing the best, always, on behalf of our county to and help us through these complicated issues of reconciling regulations with community needs. So, thank you to everyone for coming tonight.

Owens: Thank you.

Jelen: Thanks.

Planning/ Jelen: No reports.

Legal/Schilling: No reports.

The meeting adjourned at 7:34 pm.

Sign:

Attest:

Margaret Clements, Chairman

Jackie N. Jelen, Secretary

DRAFT