

**MUNSTER BOARD OF ZONING APPEALS**  
**MINUTES OF REGULAR BUSINESS MEETING**

Meeting Date: July 14, 2020

Date of Approval: \_\_\_\_\_

The announced meeting location was Munster Town Hall. Due to the Governor's Executive Orders 20-09 and 20-18 placing restrictions on the number of people allowed to gather in one location, members attended the remotely via Zoom, a video conferencing application.

**Call to Order:** 7:00 pm

**Pledge of Allegiance**

**Members in Attendance:**

Roland Raffin, President (via Zoom)  
Daniel Buksa  
Stuart Friedman (via Zoom)  
Sharon Mayer (via Zoom)  
Jonathan Petersen (via Zoom)  
Andy Koultourides, Council Liaison

**Members Absent:**

**Staff Present:**

Tom Vander Woude, Planning Director  
Dave Wickland, Attorney

**Approval of Minutes:**

**Motion:** Mr. Friedman moved to approve the amended minutes of the Munster Board of Zoning Appeals June 9, 2020 meeting.

**Second:** Mr. Buksa seconded the motion.

**Vote:** Yes – 5 No – 0 Abstain – 0. Motion carries.

**Preliminary Hearings**

- a. None.

**Public Hearings**

- a. **BZA Docket No. 20-007. Doyle Signs, Inc. on behalf of Jewel Osco requesting variances from Table 26-6.701.B of the Munster zoning ordinance to permit an additional sign on the front elevation of the building at 716 Ridge Road.**

Mr. Raffin introduces the agenda item. Mr. Vander Woude described the petition. Mr. Vander Woude said that this request is for variances to add a new sign to the Jewel-Osco store. He said the rendering is provided in the report. He said they're requesting a drive up and go sign which will require three variances. The Town code permits one wall sign, Jewel has two and they are requesting a third; the code caps the maximum height of a wall sign at 3 feet and they are requesting a 5-foot tall sign; the code states that any background panel must be metal or wood, they are requesting a sign that is vinyl on plex. He said a preliminary hearing was held on June 9 at which the members stated their concern that the

location of the sign on the east side of the façade would lead customers to think that was the pickup area and result in vehicles blocking the fire lane along the front of the store. He said that the code states that a variance should be the minimum variance necessary to address the difficulty. He said the plans have not changed since the June meeting.

Mr. John Streets from Doyle Signs said the point of the signs is to identify a service that is driven by the pandemic that will allow people to place orders via an app, drive into a parking space, and have their groceries loaded into their car without making any contact. The service is important for consumer confidence and to keep business going for Jewel-Osco. He said the sign is proposed to illuminate; the sign is well sized on the storefront and if allowed, it would allow Jewel to serve its customers in a safe manner. He said that there are wayfinding signs in the parking lot and the app provides instructions, so he does not believe that vehicles will park in the fire lane. He said that pharmacy customers do not park under the pharmacy sign. He said Jewel has installed these signs at over 35 locations and have not experienced any shoppers driving under the sign to pick up their orders. He said that they are willing to revise the sign to reduce the logo to 3 feet to eliminate one of the variances. He said the hardship is what the code requires for the site and the pandemic and the need to inform customers of a service. He provided a rendering of the sign designed to be 3 feet tall.

Mr. Petersen asked where the parking for the pickup and go is located. Mr. Streets said that they are located on the far west of the parking lot. Mr. Petersen said that the pharmacy sign is located on the west side of the building and the pharmacy is located on east side. He said that the board suggested that they relocated the signs, but the applicant hadn't done so.

Mr. Friedman asked the applicant to discuss Jewel's position on the fire lane being kept clear. Mr. Raffin said that Mr. Streets represents the sign company and is therefore probably not able to speak to anything other than the sign. Mr. Streets said that was true, but he can say that it is Jewel's intention to follow all codes related to the fire lane. Mr. Raffin said that Jewel has not followed the codes. Mr. Raffin said that they have been put on notice in the past.

Mr. Streets said that he can speak with Jewel about relocating the sign, but he has not been approved to do that at this time.

Mr. Friedman said that the terminology "drive up and go" is confusing to the public because it gives the impression that you drive up to the door to get your groceries and is therefore against the granting of the variance. Mr. Petersen asked for the staff recommendation. Mr. Vander Woude said his recommendation is to deny because they have not addressed the question of the fire lane, the location of the signage and they are seeking a variance that is greater than the minimum necessary to overcome their difficulty; he said they have also not stated a true difficulty in complying with the codes.

Mr. Petersen said that if the petition is denied then the applicant will be barred from reapplying for a year. He said that he would be willing to continue the petition to allow Mr. Streets to present the concerns stated by the Board and allow him to return with a petition that can be approved. Mr. Streets said that if the project was tabled, he can try to negotiate with Jewel and present a revision.

Mr. Koultourides suggested that a representative from Jewel be present at the next meeting to answer the board's questions.

Ms. Mayer asked for clarification on the issue with the fire lane. Mr. Raffin said that vehicles blocking the fire lane rather than parking in the correct parking spots and the amount of clutter placed on the sidewalk in front of the store that causes people to walk in the fire lane. Ms. Mayer restated that the additional concern was that the sign was located on the east rather than the west side.

Mr. Raffin opened the public hearing. Virginia Michalik, 8511 Jefferson, Munster, said that she is a homeowner behind Jewel. She says that the board is correct about the fire lane and nobody appears to be patrolling it. She said to walk to the store from behind Jewel, you either walk with the cars in driving lane and you have to walk across the fire lane to enter the building. She said that she does not trust Jewel with their signs and asked the board to be careful what kind of signs they allow.

Mr. Wickland said that, for the record, Jewel properly advertised the public hearing.

Mr. Raffin closed the public hearing.

Mr. Raffin said that he has been to places where you can order through apps, and he has not needed a sign on the building to tell him but has relied on the signs posted in the parking lots. He said that he doesn't think a wall sign is a necessity and the code intends to keep buildings neat and clean and he thinks we should adhere to the code, so he recommends denying the petition.

Mr. Buksa said that he supports a continuance and suggests that the petitioner replace the legal, non-conforming sign with a monument sign. Mr. Raffin asked whether there would be enough room on a monument sign for the logo and the drive up and go. Mr. Vander Woude said that they are permitted 18 square feet. Mr. Raffin said that is a good option for the petitioner.

**Motion:** Mr. Petersen moved to table the petition to allow Jewel to revisit the petition and bring back a design that the board might approve.

**Second:** Mr. Buksa seconded.

Discussion: Mr. Raffin asked whether Jewel would consider a monument sign. Mr. Streets said he would discuss it with Jewel.

**Vote:** Yes – 5. No – 0 Abstain – 0. Motion carries.

- b. BZA Docket No. 20-008. NP Building Partners, LLC requesting the following variances for a medical office building at 9445 Calumet Avenue: from Sec. 26-6.405.O.1.h.vii.II to waive the requirement to plant trees within the required parking lot buffer and from Sec. 26-6.405.S.2 to waive the requirement to plant thoroughfare trees along Columbia Avenue.**

Mr. Raffin introduces the agenda item. Mr. Vander Woude described the petition. He said that the Board held a preliminary hearing in August. Mr. Vander Woude said the applicant is building a medical office at the subject address. The building received approval from the Plan Commission and they were given variances which permitted them to forego the required shared parking, road connection, and cross-access; a parking variance for fewer spaces; a landscaping variance to have less internal landscaping and fewer trees within the parking lot; a setback variance so their drive aisle could be closer to the front lot line. As they were constructing the building, the Wolverine pipeline company said they could not plant trees within their 60-foot-wide easement, which included the trees in the parkway and along the east edge of the parking lot. He said North Point Orthopedics is seeking a variance to eliminate these trees from their plan. Mr. Vander Woude said that the code requires shade trees to be planted

every 30 feet or smaller trees at intervals equal to their mature canopy. Mr. Vander Woude said that Mr. Wickland had reviewed the materials submitted and advised that Wolverine can legitimately restrict the planting of trees, so it does appear that they have a practical difficulty in complying with these codes. Mr. Wickland said that it is an issue of health and safety and the law favors Wolverine. Mr. Vander Woude said that the easement leaves a ten-foot-wide strip of land adjacent to Columbia in which ornamental parkway trees can be planted and there are areas along the perimeter of the property where they could plant additional trees, so the staff recommendation is to approve the variance for the parking lot buffer trees, but to deny the variance for the parkway trees because they are able to plant ornamental trees there.

Ms. Mayer asked for clarification on the staff report. Mr. Vander Woude said that he is showing an area between the curb and the Wolverine easement in which trees can be planted. He said that there are NIPSCO overhead lines in that area, which means that the petitioner cannot plant tall shade trees, but can plant smaller, ornamental trees that grow 10-15 feet high and would not interfere with the utility lines. Ms. Mayer asked about the parking lot buffer. Mr. Vander Woude said that the trees are proposed to be removed but the hedge will remain. Mr. Raffin said that trees can be planted on other parts of the property.

Mr. Marty Murphy introduced himself as an architect with Alliance Architects, South Bend, and said that he represented the petitioner. He introduced his colleague Andy Mollison and the property owner Dr. Greg McComis of North Point Partners. He said the variance is to give relief along the east side of the property only. He said that it's driven by Wolverine's concern about inspecting and maintaining the pipeline. He said that he understands that they inspect by drone and tree canopy conceals the easement. He said that the survey and title work showed the easement and was tied to a document from 1969 that confirmed the property owner's rights for signs, parking, utilities, fencing, and landscaping. He said that policies have changed since that document was produced, including the pipeline safety act. He said that North Point has acted in good faith, the original landscaping plan is in their contract and they can install, but they have been told that as soon as its installed Wolverine will take it down. He said the new plan has changes only on Columbia, the monument sign has been removed, they are adding 35 shrubs along the driveway, they are deleting 6 maples but adding 12 yews, so they are screening the parking lot from the street, he said they are proposing to delete 5 maples and adding three flowering plums, which were selected because they are lower and narrower. He said that they have been told that if they plant trees under the NIPSCO lines, they are going to come in and take them down.

Mr. Raffin asked whether they would be willing to relocate some of the trees. Mr. Murphy agreed. Mr. Raffin asked whether they were going to replace the sidewalk along Calumet Avenue that has not been replaced. Mr. Murphy said that they were replacing only the south half of the sidewalk. Mr. Raffin said that the sidewalk appears to be 30 years old.

Mr. Raffin opened the public hearing.

Ms. Janet Watson, 9333 Calumet Avenue, said she is the neighbor to the north and is pleased with the building, she said they own multiple properties along Calumet Avenue. She said that islands of grass and bushes would be a good solution, because NIPSCO will cut down trees on their easement and Wolverine won't permit the canopy to extend over the easement, and the trees will not do well being 5 feet from a busy public street. She said a nice planting of grasses and bushes could be well-maintained and continually look good. She introduced manager Lori Kristof. Ms. Kristof, 9333 Calumet Avenue, she said

that they manage Townhomes of White Oak Estates. She said BP came through and tore up all the trees in their easement and they would not let them plant any trees even 5 feet from the easement, and they put in islands of grass, which have survived. She said NIPSCO leveled trees in the easement at 9307 Columbia. She said that trees cannot encroach into the Wolverine easement. She said that she prefers grasses to trees.

Mr. Lou Krauss said he is Wolverine Pipeline Company's real estate professional. He said that he agrees with what has been said about not planting trees within Wolverine's easement and working with the Town to develop a beautification plan that matches the intent without violating Wolverine easement. He said they inspect the easement with a fixed wing plane. He said that if there is tree canopy in the easement Wolverine may sidetrim the tree.

Mr. Raffin closed the public hearing.

Mr. Greg McComis said his intent is to beautify the property, not see a parking lot. He said they have worked diligently to come up with a solution and agrees with Mrs. Watson's suggestion to use grasses along the parkway. He thanked the board.

Mr. Raffin said that his opinion is that they can come up with a plan to use grasses along the parkway and to redistribute the trees around the property.

**Motion:** Ms. Mayer moved to approve BZA Docket No. 20-008 granting the variances for a medical office building at 9445 Calumet Avenue: from Sec. 26-6.405.O.1.h.vii.II to waive the requirement to plant trees within the required parking lot buffer and from Sec. 26-6.405.S.2 to waive the requirement to plant thoroughfare trees along Columbia Avenue with the conditions that:

1. The Columbia Avenue parkway be planted with tall grasses in lieu of trees.
2. Additional trees be planted around the property.

**Second:** Mr. Buksa seconded.

**Vote:** Yes – 5 No – 0 Abstain – 0. Motion carries.

**c. BZA Docket No. 20-009 Daniel Zunica requesting approval of a conditional use permit for a covered patio at the Danny Z's Restaurant at 1860 45th street.**

Mr. Raffin introduced the item. Mr. Vander Woude read his report into the record. He said that Daniel Zunica, owner of Danny Z's Restaurant, has submitted plans to construct a 648 square foot covered patio addition to west side of the Danny Z's Restaurant at 1860 45th Street in the Pavilion on 45th Street shopping center. The proposed addition will expand the existing patio from 445 square feet to a total of 1,093 square feet. Three parking spaces to the west of the building will be eliminated. The two ADA spaces will be relocated to the north side of the parking lot, which will require the elimination of a third space to provide an access aisle. He said outdoor dining is a conditional use so it requires a recommendation from the board and approval by the Town Council. He said in the past the board has had concerns about outdoor dining. With respect to safety, the plans indicate that the outdoor dining area will be located within a parking lot and low walls will surround the patio so staff has no concerns about the safety of patrons. With respect to access, an ADA compliant sidewalk ramp will be installed on the northeast corner of the patio to provide access to the entry door and an ADA compliant ramp will be installed along the south of the patio for egress; and with respect to noise, the nearest residential property is approximately 225 feet from the patio and so noise is not a concern. He said the applicant

also is seeking approval of a variance to waive the requirement to install parking lot landscaping and will need to receive approval of the development plan from the Plan Commission.

Ms. Mayer said that when the building was built 17 years ago, she was the project manager for the construction of the building and she said that the architect for this addition is a good friend of hers, but she does not believe these factors will affect her decision making on the item.

Mr. Buksa asked why there is no preliminary hearing for this item. Mr. Raffin said that since there is no statutory requirement for the preliminary hearing and this is a simple item that is time sensitive, he and Mr. Vander Woude discussed allowing the applicant to advertise the public hearing and in the event that the board needed more time, they could table the item. Mr. Vander Woude confirmed that there is no legal requirement for a preliminary hearing and said that the pandemic has restricted indoor dining so there was a sense of urgency so that they could keep serving their customers. Mr. Buksa said that he's concerned about setting a precedent for expediting projects. Mr. Raffin said that the times are unique and because its legally acceptable, they should make it easier on the businesses and expedite the process. Ms. Mayer asked whether the streamlining is related to both of the applicant's petitions. Mr. Raffin said that they are and the board can table the petition if that is their pleasure. Ms. Mayer asked if the property is zoned PUD and suggested that the landscaping would be the responsibility of the property owner rather than Danny Z's. Mr. Vander Woude said that the Town rezoned it to CD-4.A when they passed the new zoning code last year. He said that the code requires that a project of this scope requires landscaping and someone has to do the work, it could be the ultimate responsibility of the tenant or the owner, and because Dan Zunica is a renter of the property, he can submit an application for the variance. Mr. Friedman asked whether the conditional use permit granted to the tenant expires when the lease ends. Mr. Wickland said that the owner retains the conditional use if another restaurant leases out the space. Mr. Wickland said that the public hearing is legal and nothing in the statute or ordinance prohibits it. Mr. Wickland said that the notices of the public hearing are in proper form.

Mr. Friedman asked for a description of the materials. Mr. Vander Woude said that it is a formed stone. Mr. Friedman said that this is one of the most attractive patio additions they have seen come before the board.

Mr. Tom Ullo, Ullo Designs, 680 Lakeshore Dr, Chicago, introduced himself as the project manager and designer of the space. He said that they are proposing an addition to the outdoor seating area which is intended to add seating outside to space people out and add 28 seats and it will add charm to the end of the building. He said the canopy will match the awnings on the north side; he said the patio material is a cultured stone retaining wall and the columns are stacked. He said they are preserving the existing trees and shrubbery on the north and south side of the patio. He said the brick walls are 48 inches high and they plan to add plantings to the top. He said the accessible entrance will have a pergola installed on top of it. He said the accessible parking spaces are being relocated. He said the new signage will be in keeping with the sign code.

Mr. Raffin opened the public hearing. No one comes forward. Mr. Raffin closed the public hearing.

**Motion:** Ms. Mayer moved to forward to the Town Council a favorable recommendation to approve BZA Docket No. 20-009

**Second:** Mr. Buksa seconded.

**Vote:** Yes – 5 No – 0 Abstain – 0. Motion carries.

**d. BZA Docket No. 20-010 Daniel Zunica requesting approval of a developmental standards variance from Section 26-6.405.P.1.e of the Munster zoning ordinance to waive the required landscaping for a building addition.**

Mr. Raffin introduced the item. Mr. Vander Woude read his staff report into the record. He said that the Town's landscaping code requires that building additions include landscaping in keeping with all the landscaping requirements. These requirements are landscape islands in the parking lot and parking lot screening, which includes a hedge screen, ornamental fence, and trees planted at 30-foot intervals. He said that there is already a parking lot screen, it does not conform to our design requirements; there are no parking lot islands. He said that the situation is unique because the project is taking place in an outlot in a much larger development; under the strict application of the code, the entire parking lot would have to be landscaped. He said it's clear the applicant doesn't use the entire parking lot and is not responsible for it. He said that if the variance was approved, it would waive the requirement for this project, but any future improvements would still be required to comply when applicable. Mr. Friedman asked if the board can require landscaping just for this outlot. Mr. Vander Woude said that the outlot has not been subdivided into a separate lot. He said that the board could grant a variance from the landscaping requirements for most of the lot, but not the area used by Danny Z's. Mr. Friedman said that the board should consider requiring landscaping around the restaurant because the patio is being constructed in the middle of a parking lot. Mr. Wickland said that he agrees that the board can require minimal landscaping. Mr. Raffin said that he doesn't think they need to add new islands but there could be a way to add some trees and bushes to the 45<sup>th</sup> Street frontage as a buffer. Ms. Mayer said that there could be a landscaped extension or curbing around the patio. Mr. Vander Woude said that they cannot expand to the west because they will encroach into the required drive aisle. Mr. Ullo said that they are planning to plant ivy or plantings along the top of the knee wall along the west side and that there are trees on the north and south side of the patio. Mr. Raffin suggested that the petitioner could work with the staff to develop some ideas. Mr. Friedman said that he is not interested in making it a requirement of an approval, but a recommendation to the petitioner. Mr. Friedman suggested that they put it to a vote to expedite the project considering the pandemic.

**Motion:** Mr. Friedman moved to approve BZA Docket No. 20-010 granting a developmental standards variance from Section 26- 6.405.P.1.e of the Munster zoning ordinance to waive the required landscaping for a building addition with the suggestion to the petitioner to consider additional landscaping for installation at their own discretion.

**Second:** Mr. Petersen seconded the motion.

**Vote:** Yes – 5 No – 0 Abstain – 0. Motion carries.

## **Findings of Fact**

- a. **BZA Docket No. 20-005 Big Star Developments, LLC requesting a use variance to permit a single-family residence in a CD-4.A General Urban – A Character District at 8319 Jackson Street.**

**Motion:** Mr. Buksa moved to approve.

**Second:** Mr. Friedman

**Vote:** Yes – 5 No – 0 Abstain – 0. Motion carries.

- b. **BZA Docket No. 20-006 Andrew and Carly Olczak requesting a variance from Sec.26-151(a)(1) of the Munster Municipal Code to reduce the required side property line setback for a swimming pool to 3 feet to install a swimming pool in the rear yard at 8316 Castle Drive.**

**Motion:** Mr. Buksa moved to approve.

**Second:** Mr. Friedman

**Vote:** Yes – 5 No – 0 Abstain – 0. Motion carries.

- c. **BZA Docket No. 20-009 Daniel Zunica requesting approval of a conditional use permit for a covered patio at the Danny Z's Restaurant at 1860 45th street.**

**Motion:** Mr. Friedman moved to approve.

**Second:** Ms. Mayer

**Vote:** Yes – 5 No – 0 Abstain – 0. Motion carries.

- d. **BZA Docket No. 20-010 Daniel Zunica requesting approval of a developmental standards variance from Section 26-6.405.P.1.e of the Munster zoning ordinance to waive the required landscaping for a building addition.**

**Motion:** Mr. Friedman moved to approve the findings of fact revised to include the suggestion that the petitioner consider additional landscaping for installation at their own discretion.

**Second:** Ms. Mayer

**Vote:** Yes – 5 No – 0 Abstain – 0. Motion carries.

#### **Additional Business/Items for Discussion**

- a. Mr. Buksa said that the discussion regarding BZA 20-005 included a suggestion that the board consider sending a recommendation to the Plan Commission to consider rezoning the area to a residential district. Ms. Mayer said that she supported that. Mr. Petersen suggested that the board should hear from the petitioner; he said that he wasn't sure the board should rezone it without their input. Mr. Buksa said that the suggestion was to rezone the entire area. Mr. Raffin said that they went through an extensive rezoning process last year that included public input and presentations and they came up with the idea of the districts on Ridge Road; so keeping it legal nonconforming will allow the use to continue but will keep the option for a developer to come in and build some higher density use. Mr. Petersen said that the Town Council would make a decision and said that a resolution asking them to consider would be the appropriate action. Mr. Buksa said that was his intent – to send a resolution to the Plan Commission. Mr. Buksa asked that the resolution be on the next meeting's agenda. Mr. Raffin confirmed that it would.



**Adjournment:**

**Motion:** Mr. Buksa moved to adjourn the meeting.

**Second:** Mr. Friedman seconded the motion.

**Vote:** Viva voce. Motion carries.

Meeting adjourned at 8:50 p.m.

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Chairman Roland Raffin  
Board of Zoning Appeals

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Date of Approval

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Executive Secretary Thomas Vander Woude  
Board of Zoning Appeals

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Date of Approval