

**MUNSTER BOARD OF ZONING APPEALS**  
**MINUTES OF REGULAR BUSINESS MEETING**  
Meeting Date: August 10, 2021

The announced meeting location was Munster Town Hall. In accordance with the Governor's Executive Orders 20-09 and subsequent orders related to the COVID-19 pandemic placing restrictions on the number of people allowed to gather in one location, some members attended the meeting remotely via Zoom, a video conferencing application.

**Call to Order:** 6:45 pm

**Pledge of Allegiance**

**Members in Attendance:**

Daniel Buksa  
Stuart Friedman (via Zoom)  
Sharon Mayer (via Zoom)  
Jonathan Petersen  
Roland Raffin  
Lee Ann Mellon (Town Council  
Liaison)

**Members Absent:**

**Staff Present:**

Tom Vander Woude, Planning  
Director  
Dave Wickland, Attorney

**Approval of Minutes:**

**Motion:** Mr. Buksa moved to approve the minutes of the July 13, 2021 meeting.

**Second:** Mr. Raffin.

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

**Preliminary Hearings**

- a. **BZA Docket No. 21-010 Kyle and Jennifer Dempsey requesting approval of a variance from the fence requirement for a residential swimming pool at 9745 Laurel Court.**

Mr. Vander Woude reported that the applicant Kyle and Jennifer Dempsey have submitted a building permit application for an in-ground swimming pool to be installed in the rear yard of their single-family home at 9745 Laurel Dr. He said the rear yard is fenced on three sides and the applicants are requesting a variance from the requirement that the entire yard be fenced. He said they are proposing to install an automatic pool cover instead. He said that the swimming pool ordinance is not the zoning ordinance, but it permits the Board of Zoning Appeals to review requests for alternative safety measures other than fences if the alternatives meet the intent of the code. He said that the ordinance does not require findings of difficulty or hardship that are required for a zoning variance. Attorney Jared Tauber representing the applicant said that the Dempsey's live on a cul-de-sac and their backyard is surrounded on three sides by fencing and are installing a pool with an electric cover that will stay in place at all times when the pool is not in use. HE said that the intent of the ordinance is there because the entire yard is surrounded on three sides by a fence. He said the pool will be behind the house and only visible to the homeowner and their neighbors. Ms. Mayer asked why they would not put up a fence to be on the safe side. Mr. Tauber said that the fence is more expensive. Mr. Friedman said that swimming pools were considered an attractive nuisance and asked Mr. Tauber to describe the pool cover. Mr. Tauber said that

the pool is operated by a key, which when turned allows the cover to open electronically and retreat to one side of the pool and a button closes the pool cover which prevents all access. Mr. Friedman added if the cover can malfunction and open on its own. Mr. Tauber said he did not know, but his understanding is that this is standard. Mr. Friedman asked Mr. Tauber to bring more specific safety information to the next hearing. Mr. Petersen said the neighboring fences enclose all but one side of the yard. He said that the client is suggesting that because there are three fences there is no need for additional fencing. Mr. Tauber said that he believes other town and the state permit a pool cover in lieu of the fence. Mr. Petersen asked if the cost of the project is the hardship. Mr. Tauber said it's the cost and the look of the fence. Mr. Petersen said that in his experience on the board a pure cost basis for seeking the variance is often insufficient and he suggested revisiting the homeowners and finding a legitimate hardship. He said that pools can be an attractive nuisance and could result in tragedy if not properly protected. Ms. Mayer asked if the fence on the three sides is to the proper height for a yard with a pool. Mr. vander Woude said he believes it is. Mr. Vander Woude said that the Town requires a 6-foot fence the enter perimeter of the pool, but he said the applicant suggests that a pool cover is safe. Mr. Vander Woude said that state code has determined that the pool cover is equivalent to a fence. Ms. Mayer said they may forget to close the cover. Ms. Mayer said that if there is already a fence on three sides, it would be easy to install the fourth side themselves. Ms. Mayer asked if the intention was to keep outsiders from accessing the pool or themselves? Mr. Tauber said it is everyone and this is the way pools are going now; you can install a pool cover and walk on them without falling in the pool. He said that fences are secure, but they may be left unlocked, and someone could wander in and fall in. He said that the property owner Kyle Dempsey is a State Farm Insurance agent who deals with liability issues all day and if he is comfortable with it, he thinks its relevant. Mr. Buksa asked Mr. Wickland what the standard of review is for this variance. Mr. Vander Woude said that the swimming pool code includes a unique standard of review, which is the statement of purpose of the ordinance. Mr. Raffin asked if the state permits a pool cover as a substitute for a fence, then the Town should consider permitting it as well. He provided a news article about a child drowning in Griffith, who fell into a pool after opening the fence.

**Motion:** Mr. Buksa moved to set petition BZA 21-010 for a public hearing.

**Second:** Mr. Raffin.

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

## **Public Hearings**

- a. **BZA 21-006 Parth Patel requesting variances from the minimum parking ratio to develop a Smoothie King at 8130-8138 Calumet Avenue**

**Mr. Vander Woude reported that Mr. Patel has requested a continuance.**

**Motion:** Mr. Buksa moved to continue the public hearing for BZA 21-006 to the September 14, 2021 meeting.

**Second:** Mr. Raffin.

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

- b. **BZA Docket No. 21-009 Legacy Sign Group on behalf of MARVL LLC requesting approval of multiple variances from TABLE 26-6.701.B MONUMENT SIGN SPECIFIC STANDARDS and SECTION 26-6.701.B.5.t for a monument sign at 1750 45th Street.**

Mr. Vander Woude reported that there was no preliminary hearing for the project because it was inadvertently left off the agenda. He said they are requesting a number of variances to the install a new monument sign at the Citgo station at 1750 45<sup>th</sup> street. He said they are requesting variances for sign area of 37.5 square feet, for a height of 6 feet, a setback of only 5 feet, and to install a hollow metal, cabinet-style sign. Mr. Shaun Ensign of Legacy Sign Group said that the basis of the variance request is to update an aging pylon sign. He said the area of the proposed sign will be less than the existing 50 square foot sign, which will allow for LED price changers, which come in standard sizes, and allow for display of two commodities. He said that they would be permitted two monument signs, but they're only seeking one. He said that they are requesting a height of 7 feet, which will bring the sign down substantially, but still be visible, and elevate the sign for landscaping and snow. He said that the sign would be consistent with nearby signs. He said that they are using the existing sign support which requires them to install the sign 5 feet from Fran-Lin. He said the proposed cabinet sign will house the internal LED components, which have to be in a cabinet and the illuminating elements, and conceal the internal supports. He said that this sign as proposed is closer to current zoning standards than the existing. Mr. Friedman opened the public hearing. No comments. Mr. Friedman closed the public hearing. Ms. Mayer asked if the base will be actual brick with a limestone cap. Mr. Ensign said it will be an actual thin brick veneer with an actual limestone cap. Ms. Mayer pointed out that the drawing shows one commodity, but Mr. Ensign had stated that there will be two. Mr. Ensign said that the owner was hoping to be able to add a second commodity in the future. Ms. Mayer asked if the sign would be illuminated on both sides. Mr. Ensign said that it would.

**Motion:** Mr. Buksa moved to deny the four variance requests included in BZA 21-009.

**Second:** Mr. Petersen.

Discussion: Ms. Mayer asked if the motion were denied, would they be able to reapply. Mr. Vander Woude said that they could not reapply for two years. Mr. Ensign asked what type of sign would be permitted. Ms. Mayer asked if there are other types of signs that gas stations could install. Mr. Vander Woude said that there are likely ways to conform. He said that he doesn't have a list of these but has seen all-brick gas station signs. Mr. Ensign asked if the petition could be table to permit them to redesign the sign. He said it has to include a cabinet for the LED price changers.

**Mr. Buksa withdrew his motion. Mr. Petersen withdrew his second.**

**Motion:** Ms. Mayer moved to table BZA 21-009.

**Second:** Mr. Raffin.

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

### Findings of Fact

- a. **BZA 20-012.Superior Ave.475. BCORE Corridor Chicago LLC represented by Kimley-Horn requesting approval of developmental standards variances from Table 26-6.405.A-7 of the Munster zoning ordinance to expand a driveway beyond the maximum permitted width, to permit off-street parking in the first lot layer, to permit off-street loading in the first lot layer, and to waive the required screening for loading areas and from Table 26-6.405.O-3 to waive the minimum dimensions for a parking area.**

**Motion:** Mr. Buksa moved to approve findings of fact for BZA 20-012.

**Second:** Mr. Petersen.

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

- b. BZA 21-002 Guy Costanza/GM Contracting representing Vincent Cryns requesting approval of multiple variances for a proposed commercial development at 407-411 Ridge Road.**

**Motion:** Mr. Buksa moved to approve findings of fact for BZA 20-002.

**Second:** Ms. Mayer.

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

- c. BZA 21-004 Good Oil Company Inc. requesting a conditional use permit to reuse an existing accessory structure as a car wash at the Marathon gas station at 9451 Calumet Avenue.**

**Motion:** Mr. Buksa moved to approve findings of fact for BZA 20-004.

**Second:** Mr. Petersen.

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

- d. BZA 21-007 Good Oil Company Inc. requesting a variance from the minimum setback standards for an accessory building to reuse an existing nonconforming building as a car wash at the Marathon gas station at 9451 Calumet Avenue.**

**Motion:** Mr. Buksa moved to approve findings of fact for BZA 20-007.

**Second:** Mr. Petersen.

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

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

Ms. Mayer asked the status of Michael Dust's garage, which had been constructed on the condition that the attached garage be closed. Mr. Vander Woude said he was notified and informed the staff that the garage is not being used because he cannot access it without a gate, which has not been installed. Ms. Mayer asked if the height exceeded the code. Mr. Vander Woude said that it was built during the time when the code permitted greater accessory building heights.

**Next Meeting:** Mr. Freidman announced that the next regular business meeting will be September 14, 2021, at 6:45 p.m.

#### **Adjournment:**

**Motion:** Mr. Petersen moved to adjourn.

**Second:** Mr. Raffin.

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

Meeting adjourned at 7:36 p.m.

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Chairman Stuart Friedman  
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