



BOARD OF ZONING APPEALS STAFF REPORT

To: Members of the Board of Zoning Appeals

From: Sergio Mendoza, Planning Director

Meeting Date: December 12 2023

Agenda Item: BZA 23-012

Application Type: Developmental Standards Variance

Hearing Type: Rescheduled Public Hearing

Summary: Dave DeRolf is requesting a variance approval from TABLE 26-6.405 A-3 *Private Landscaping and Fencing, Corner Lots, 3.* to reinstall an existing fence 14' 11" south, from the home at 8649 Greenwood Avenue.

Applicant: Dave DeRolf for Paul Kraszyk (property owner)

Property Address: 8649 Greenwood Avenue

Current Zoning: CD-3.R2 Neighborhood – 60' Lot One Family Residence District

Adjacent Zoning: North: CD-3.R2(Neighborhood - 60' Lot SFR Character District)
South: CD-3.R1 (Neighborhood - 70' Lot SFR Character District)
East: CD-3.R2 (Neighborhood - 60' Lot SFR Character District)
West: CD-3.R2 (Neighborhood - 60' Lot SFR Character District)

Action Requested: Public Hearing

Actions Required: Review Findings of Fact and Reschedule Public Hearing

Staff Recommendation: Schedule Public Hearing for January 9, 2024

Attachments: 1. BZA Application, Exhibit A (pg. 7)
2. Plat of Survey with proposed fence, Exhibit B (pg. 9)

PROJECT BRIEFING

Dave DeRolf is representing the property owner at 8649 Greenwood Avenue, Paul Kraszyk. See Image 1 below. Mr. DeRolf has submitted a fence permit to remove and reinstall an existing fence south 14 feet 11 inches from the home. The fence permit is currently on hold and is seeking a variance request from the Munster Character Based Zoning Code (MZC), TABLE 26-6.405 A-3 *Private Landscaping and Fencing, Corner Lots, 3.*; which requires a fence be setback three feet from the public right-of-way.

A fence 11 feet south from the home would be permitted without variance approval. The Board of Zoning Appeals may consider a fence from the home to the end of the property line, which is 14 feet south from the home. However, the Board of Zoning appeals cannot grant a variance that will encroach 11 inches into the public right-of-way. Image 2 below identifies 14 feet exist from the home to the public right of way.



Image 1 Property Location.

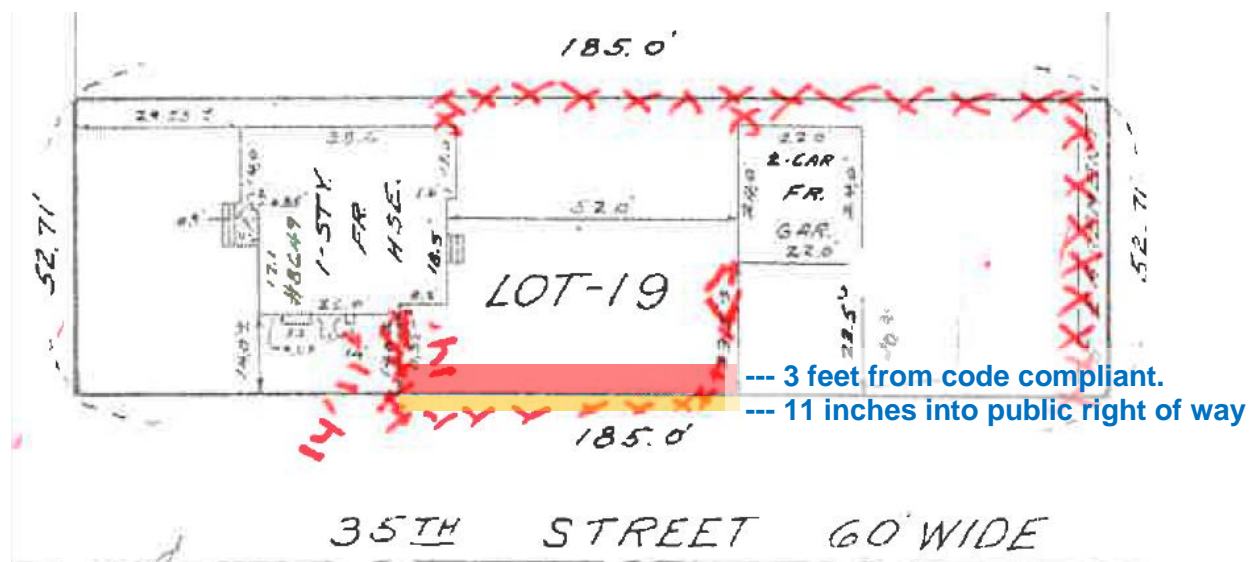


Image 2 - Property Dimensions.

PROJECT HISTORY

The subject property currently has an existing fence extending 14' 11" from the south side of the home. The Munster Community Development Department has on record two fence permits. One fence permit was issued in 2004 and another fence permit was issued in 2018. One or both fence permits may be paper archived in storage. Staff will need to investigate archived files. A paper record may reveal if a permit was inadvertently issued to encroach 11 inches into the public right-of-way or if the fence was inadvertently installed 11 inches into the public right-of-way. Also, it has been determined that the Munster Zoning Code permitted fence installations to the property line on corner lots prior to 2019. Staff has determined that the 2004 permit no longer available for review. However, staff was able to locate the 2018 permit application and supporting documents. Within said 2018 permit document a Surveyor Location Report shows a fence installed along the property line, See Image 2.1 below.

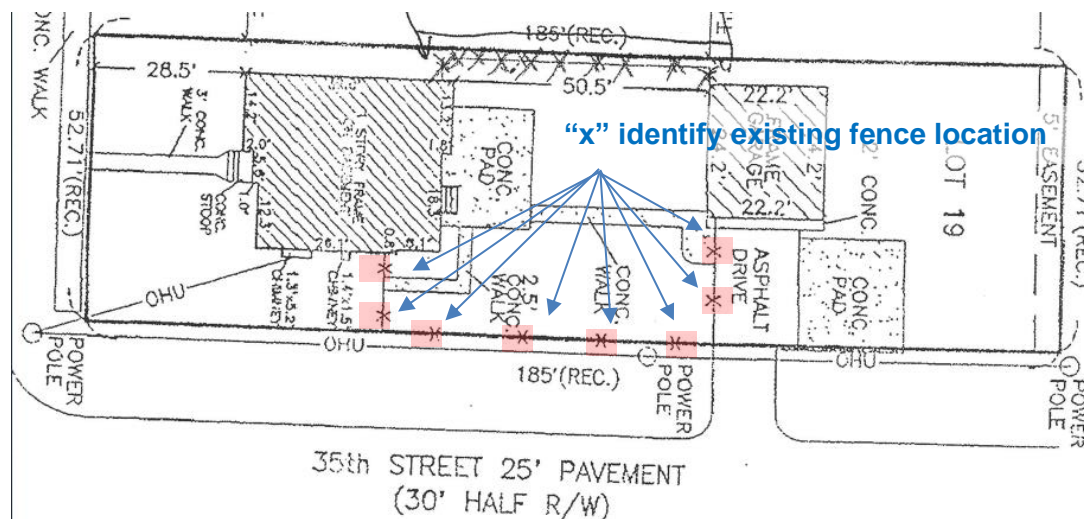


Image 2.1 - Surveyor Location Report from 2018 Fence Permit.



Image 3 East View of Fence.



Image 3 West View of Fence.

DISCUSSION

The applicant should be advised that the Board of Zoning Appeals may only consider a variance within the property limits and is not authorized to grant the use or encroachment of the public right-of-way.

The Munster Character Based Zoning Code permits fence installation 3 feet back from the public right of way. Complying with this code would permit the property owner to install a fence 11 feet from the home. However, the applicant or property owner has expressed concerns with maneuvering the fence around an existing tree and landscape boarder/abutment.

TABLE 26-6.405 A-3 PRIVATE LANDSCAPING AND FENCING, CORNER LOTS, 3. (MZC pg. 71)

"A Fence must be set back a minimum of three feet from the public right of way."

VARIANCE STANDARDS

The variance process is established to provide relief to a property owner when, due to unique circumstances, compliance with the zoning code imposes a hardship or practical difficulty on a property owner. The BZA is under no obligation to grant a variance. It is the petitioner's responsibility to prove a hardship or practical difficulty. The BZA should ask the petition to address the criteria listed below.

Sec. 26-6.804.I of the Munster Zoning Code states that the basis for a variance is as follows:

g. General Standards.

A Variance may be granted only if the Decision-Making Authority has made the following determinations for such Variance:

- i. the practical difficulties or unnecessary hardships that would be incurred by strict application of the Use or Development standard, as applicable, are unique and not shared by all properties in the vicinity and are not self-imposed;
- ii. such Variance is the minimum Variance that will relieve such practical difficulties or unnecessary hardships, as applicable;
- iii. such Variance is in the spirit of the general purposes and intent of this Article as stated in Division 1; and
- iv. such Variance is so designed as to provide reasonable consideration to, among other things, the character of the neighborhood, District, or Civic Zone, the conservation of property values in the vicinity, and the guidance of Development in accordance with the Comprehensive Plan.

h. Specific to Development standards Variances:

A Variance from Development Standards may be approved or approved with conditions only if:

- i. it will not be injurious to the public health, safety, morals, and general welfare of the community;
- ii. the use and value of the area Adjacent to the property included in the Variance will not be

- affected in a substantially adverse manner; and
- iii. the strict application of the Development standards will result in practical difficulties in the use of the property.

**The applicant has not addressed the criteria for the above development standards variance:
Sec. 26-6.804.I. h.**

STAFF FINDINGS and RECOMMENDATION

On Monday, October 2, 2023 staff contacted Mr. DeRolf, via telephone, to confirm that the Application and Plat of Survey identifies 14 feet to the property line and that they are requesting 14 feet 11 inches. Mr. DeRolf acknowledged that the additional 11 inch ask is part of reinstalling the fence to its current location and they would like to advance the application as submitted, despite being advised that the Board of Zoning Appeals may only consider a variance within the property limits and cannot authorize use or encroachment of the public right-of-way. In addition, the applicant has not submitted the DEVELOPMENTAL VARIANCE CONDITIONS OF APPROVAL portion of the application packet (page 9). Staff had requested that this portion of the application packet be completed and submitted as part of the process to schedule this variance for Public Hearing. The DEVELOPMENTAL VARIANCE CONDITIONS OF APPROVAL portion of the application packet has not been received as of December 8, 2023 and staff is requesting now that this document be submitted before the January 9 2024 Public Hearing. In addition, Public Notice requirements were not met and updated Public Notices information has been provided for a January 9, 2024 Public Hearing.

MOTION

The Board of Zoning Appeals may consider the following motion:

Motion to reschedule BZA23-012 for a Public Hearing on January 9, 2024 with the condition that the Findings of Fact for the DEVELOPMENTAL VARIANCE CONDITIONS OF APPROVAL are filed with the Munster Community Development Department prior to the Public Hearing.

EXHIBIT A

Petition BZA _____ - _____

Date: _____

Application Fee: \$ _____

Sign Fee: \$ _____

Town of Munster Board of Zoning Appeals Petition Application**OWNER INFORMATION:**Name of Owner Paul KraszykPhone Number 219-712-6516Street address, City, ST, ZIP Code 8649 GreenwoodEmail address Paul@Krazman.com**APPLICANT OR PETITIONER INFORMATION (if different than above):**Name of Applicant/Petitioner Dave DeRolsPhone Number 219-712-6517Street address, City, ST, ZIP Code 718 N. Robin Ct Griffith IN 46319Email address dave@krazman.com**PROPERTY INFORMATION:**

Business or Development Name (if applicable)

Address of Property or Legal Description 8649 Greenwood Oakgrove Add. L. 19Current Zoning CD-3-R2**APPLICATION INFORMATION:**

Please select what this Application is for:

☒ Variance

If yes, select one of the following:

☐ Use ☒ Developmental Standards☐ Conditional Use☐ Administrative Appeal

Brief Description of Project and List of Variances or Conditional Uses Being Requested (if applicable):

Want to Replace existing fence where it is Now
Fence is 14' 11" from house to cornerProperty Line is 14' (code states 3 ft off of Rte away)We are asking to Put fence in same location whichis 3' 11" Variance Table 26-6-405 A-3

Name of Registered Engineer, Architect or Land Surveyor

Phone Number

Street address, City, ST, ZIP Code

Email address



Petition BZA _____ - _____

Town of Munster Board of Zoning Appeals Application Signature Page

I hereby authorize Don Scholtz to act on my behalf as my agent in this petition and to furnish, upon request, supplemental information in support of this petition application.

Paul Gough President 9/20/23
Signature of Owner Date

[Signature] 9/20/23
Signature of Applicant Date

EXHIBIT B**PLAT OF SURVEY**

NAME OF OWNER Patricia Bes (L-4789)
 STREET ADDRESS 8649 Greenwood Avenue, Munster, Indiana
 ORDERED BY Bank One Mortgage Corp
 DESCRIPTION OF PROPERTY Lot 19, Oak Grove Addition to Munster, as shown in
Plat Book 21, page 14, in Lake County, Indiana.
 Flood Zone C per Federal Map

**EXPLANATIONS**

NO DIMENSIONS SHOULD BE ASSUMED BY SCALE MEASUREMENTS UPON THE PLAT

TOP OF PLAT IS NORTH
 SCALE 30.0 FT. = 1"
 STATE OF INDIANA }
 COUNTY OF LAKE } ss. CROWN POINT, INDIANA June 26, 19 91
 FOR MORTGAGE PURPOSES ONLY

THIS IS TO CERTIFY THAT I HAVE SURVEYED THE ABOVE DESCRIBED
 PROPERTY ACCORDING TO THE OFFICIAL RECORDS AND THAT THE
 PLAT HEREON DRAWN CORRECTLY REPRESENTS SAID SURVEY.

George E. McIntosh
 Registered Land Surveyor, No. 9428

Note—Contractors or Builders should be notified to carefully test and compare on the ground the points, measurements, etc., as noted in this certificate, with the stakes, points, etc., given on the property, before building on the same, and AT ONCE report any seeming or apparent difference between the same to the Surveyor, that misunderstanding, displacement of points, etc., may be corrected before damage is done.

FIELD BOOK NO. _____ PAGE _____



PLAT NO. _____

1005 Ridge Road • Munster, IN 46321 • (219) 836-8810 • Police/Fire Emergencies 911

Police Non-Emergency (219) 836-6600 • Fire Non-Emergency (219) 836-6960

www.munster.org