

MUNSTER BOARD OF ZONING APPEALS

PETITIONER:

Frank Zischerk
8015 Greenwood Ave.
Munster, IN 46321

BZA DOCKET No. 25-005

APPLICATION: Administrative Appeal

PROPERTY:

8031 Greenwood Ave.
Munster, IN 46321

FINDINGS OF FACT

1. Petitioner, Frank Zischerk ("Petitioner"), is the owner of the real estate located at 8015 Greenwood Ave., Munster, Indiana, and the petitioner of the administrative appeal filed with the Board of Zoning Appeals requesting review of the June 25, 2025, legal opinion of the Town attorney, on behalf of the zoning officials, regarding a tarp structure erected on the property of Petitioner's neighbor at 8031 Greenwood Ave., Munster, Indiana (Parcel #45-07-18-483-005.000-027) (hereinafter "Property"). Specifically, Petitioner challenges the Town's determination that the tarp structure is a "screen" per the Town Zoning Code and thus is exempt from regulation. Petitioner requests that the Board reverse the Town's determination and find that the structure is a fence and regulate it according to the Town's fence standards.
2. The Property at 8031 Greenwood Avenue is in a CD-3.R2 Neighborhood Character District in the Town of Munster with a single-family residential home located on the lot. Petitioner's home is adjacent to the Property and located in the same Zoning District.
3. The owner of the Property erected an 8-foot-high tarp with heavy string or wire threaded through grommets on the tarp and fastened to free-standing posts on their lot (hereinafter "tarp structure"). The tarp structure is located on the Property approx. 3 feet from the side lot line shared with Petitioner, and extending from the rear lot line approx. 100 feet toward the front lot line on Greenwood Avenue. The tarp structure is free-standing and not attached to a fence or any other structure.
4. Zoning officials for the Town determined that the tarp structure did not violate the Munster Character-Based Zoning Code (hereinafter "Zoning Code") because screens in residential Zoning Districts are not regulated by the Zoning Code, and therefore, the zoning officials cannot force their removal. Petitioner requested an opinion in writing from the Town's attorney, which was provided to Petitioner on June 25, 2025. See written correspondence from Westland & Bennett P.C. to Petitioner, dated June 25, 2025.
5. Petitioner filed an application for administrative appeal with the Board of Zoning Appeals on July 14, 2025.
6. This matter came before the Munster Board of Zoning Appeals at its regularly scheduled meeting on August 12, 2025. The Zoning Administrator presented all documents, plans, and papers constituting the record of the action from which Petitioner filed the administrative appeal. Petitioner appeared and presented testimony, evidence, and argument pertaining to his administrative appeal. The Town's Planner and Zoning Administrator, Sergio Carrera Mendoza, appeared before the Board and briefly discussed his written Staff Report which is part of the record of the Board. Town Attorney Nicole A. Bennett appeared remotely and

presented legal reasoning supporting the Town's interpretation of the Zoning Code as it relates to the tarp structure. Based upon the testimony and evidence presented, the Town of Munster Board of Zoning Appeals, upon motion duly made and seconded, by a vote of three (3) in favor, zero (0) opposed, one (1) abstained, and one (1) absent, voted to table the administrative appeal until the Board's next regular meeting on September 9, 2025.

7. This matter came before the Munster Board of Zoning Appeals again on September 9, 2025. Petitioner appeared and presented additional testimony, evidence, and argument pertaining to his administrative appeal. Lauren Thiell, owner of the Property (together with her husband, Samuel Friemoth), appeared in person and provided testimony, evidence, and argument, as permitted by law. Town Attorney Nicole A. Bennett appeared in person and answered questions and presented further legal reasoning supporting the Town's interpretation of the Zoning Code as it relates to the tarp structure. Based upon the testimony and evidence presented, the Town of Munster Board of Zoning Appeals, upon motion duly made and seconded, by a vote of four (4) in favor, zero (0) opposed, one (1) abstained, and zero (0) absent, voted to affirm the determination of the Town Attorney as set forth in her legal review dated June 25, 2025, that the tarp structure at 8031 Greenwood Avenue, Munster, Indiana, is a screen under the Zoning Code and thus is exempt from regulation by the Town.
8. In making such determination, the Munster Board of Zoning Appeals now makes the following Findings of Fact:
 - (A) The Property at 8031 Greenwood Avenue is located in a CD-3.R2 Neighborhood Character Zoning District in the Town of Munster.
 - (B) Petitioner filed an administrative appeal with the Board of Zoning Appeals, which specified the grounds of the appeal and was filed within such time and in such form as required by the Board of Zoning Appeals. Specifically, Petitioner challenges the Town's determination that his neighbor's tarp structure is a "screen" per the Town Zoning Code and thus is exempt from regulation.
 - (C) Upon appeal, the Board of Zoning Appeals may reverse, affirm, or modify the order, requirement, decision, or determination that is the basis of the appeal. For this purpose, the Board of Zoning Appeals has all the powers of the official, officer, board, or body from which the appeal is taken.
 - (D) Section 26-6.113, of the Zoning Code, entitled *Defined Terms*, requires that the terms defined in Division 9 of the Zoning Code shall apply throughout the Zoning Code, and any term not defined in Division 9 shall be accorded its commonly accepted meaning.
 - (E) The Zoning Code defines a fence as follows:

As a structure, the word "Fence" means a *structural device erected to serve as an architectural element, landscape element, visual screen or physical barrier.*

Further, the Zoning Code defines a screen as follows:

Used as a noun, a Building, Building Element, *Wall or Fence constructed of an opaque material or an evergreen hedge, which blocks*

an item or condition from view from a vantage point, as required by this Article. Not synonymous with Streetscreen.

Due to the repetitive use of the terms "fence" and "screen," the tarp structure fits generally within both definitions. However, the tarp structure satisfies all elements of a "screen."

- (F) The tarp structure is a "screen," as defined in the Zoning Code, in that the tarp structure is *"constructed of an opaque material"* and it *"blocks an item or condition from view from a vantage point"* as its sole purpose. To the contrary, although the tarp structure was erected to serve as a visual screen like a fence, the tarp structure's construction is incapable of weight-bearing sufficient to be *a structural device*, as commonly defined.
- (G) "Screens" are not included in the residential fence regulations in the Zoning Code. "Screens" are specifically excluded by name from the Town's wall and fencing regulations in the CD-3.R2 residential Zoning District. Specifically, the regulations pertaining to height, construction, and materials apply only to "Walls & Fencing (not including Screens)", as stated in Table 26-6.405.A-3 of the Zoning Code.
- (H) Further, the Zoning Code does not include screen regulations for the CD-3.R2 residential Zoning District, nor for any other residential zoning district in the Town. Moreover, "screens" are specifically called out as being "Not Regulated" in the general CD-3 Zoning District Standards, as stated in Table 26-6.405.A-1 of the Zoning Code.
- (I) As a result, the tarp structure on the Property is exempt from the Zoning regulations of the Town.

WHEREFORE, based upon the above evidence and Findings, the Munster Board of Zoning Appeals by a vote of four (4) in favor, zero (0) opposed, one (1) abstained, and zero (0) absent, voted to affirm the determination of the Town Attorney as set forth in her legal review dated June 25, 2025, that the tarp structure at 8031 Greenwood Avenue, Munster, Indiana, is a screen under the Zoning Code and thus is exempt from regulation by the Town.

The Munster Board of Zoning Appeals took the above official action on September 9, 2025. Findings of Fact approved on the 14th day of October 2025.

MUNSTER BOARD OF ZONING APPEALS

By: _____
Brad Hemingway, Chairman

ATTEST:

Sergio Carrera Mendoza, Executive Secretary