**To:** Members of the Board of Zoning Appeals

**From:** Tom Vander Woude, Planning Director

**Date:** May 7, 2020

**Re:** **PUBLIC HEARING**

BZA Docket No. 20-004 Libro Inc/Tony Hanas, requesting a conditional use permit for a restaurant with outdoor dining in a CD-4.A district in order to operate an outdoor dining area at 313 Ridge Road.

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| **Applicant:** | Libro Inc/Tony Hanas |
| **Property Owner:** | MJF Properties |
| **Property Address:** | 313 Ridge Road |
| **Current Zoning:** | CD-4.A |
| **Adjacent Zoning:** | North: CD-4.A<br>South: CD-5<br>East: CD-5<br>West: CD-4.A |
| **Action Requested:** | Favorable Recommendation |
| **Additional Actions Required:** | Findings of Fact<br>Town Council Approval |
| **Attachments:** | BZA Application including explanation of project, photos of existing outdoor dining area, and proposed landscaping plan. |

*Figure 1: Subject Property*

## Background

The applicant Libro Inc/Tony Hanas opened the 313 Tap Room, a self-serve bar and restaurant in November 2019. During the remodel of the building, they presented plans for an outdoor dining area. The outdoor dining area was constructed. The applicant is now seeking a conditional use permit to open the outdoor dining area to customers. The Board of Zoning Appeals held a preliminary hearing was held on April 14, 2020. No concerns were expressed.

## Process

The Munster zoning ordinance states that the BZA shall hold a public hearing on all conditional use applications upon notice published and provided to landowners surrounding the proposed conditional use. Thereafter, the conditional use application shall be forwarded to the town council with a recommendation of the board of zoning appeals that the application be granted, a recommendation that the application be denied, or no recommendation. The board of zoning appeals shall adopt written findings indicating the reasons for its recommendation.

## Discussion

The petitioner has provided photos of the proposed outdoor dining area as well as a landscaping plan for the site.

In keeping with concerns expressed by the BZA about previous conditional use requests for outdoor dining areas, staff offers the following comments:

**Safety**
The plans indicate that the outdoor area will be located approximately 70' from Ridge Road. Staff has no concerns about the safety of patrons.

**Access**
As stated in the attached response:
There is [a] wrought iron fence on the North and South of the patio with unobstructed views from Ridge Road and the parking lot. The south fence will have an emergency exit only gate. The only access to the patio is by going in and out the double doors from the inside of the building. Patrons will come in through the main entrance of the building and check in at the point of sale before being able to go out to the patio.

**Noise**
The adjacent property is a Citgo gas station. The outdoor dining area is enclosed on all sides. The nearest residential property is approximately 150' feet away and is blocked by the building.

Staff has two concerns related to the site:

1. As of the drafting of this memo, the applicants have not fully implemented the attached landscaping plan that was approved administratively. Staff recommends this be completed as a condition of the special use permit.
2. Staff has noted that the rear parking lot, which is used by 313 Tap Room patrons through a shared parking agreement is partially screened with a dilapidated chain link fence (see photo). Staff recommends that the applicants replace this with a six-foot solid fence the entire length of the parking lot as a condition of the special use permit.

*Figure 2: Dilapidated screening fence*

**Conditional Use Criteria for Approval**
Sec. 26-6.405.L.g of the Munster Municipal Code states that no conditional use shall be granted by the board of zoning appeals unless the conditional use:

i. It is in fact a Conditional Use ("CU") listed for the applicable Zoning District involved...;
ii. It will be harmonious with and in accordance with the general and specific intent, purposes and objectives of this Article as stated in Section 26-6.105 and the Town's Comprehensive Plan;
iii. It will be designed, constructed, operated, and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and will not change the essential character of the same area;
iv. It will not be hazardous or disturbing to existing neighboring uses;
v. It will be served adequately by essential public facilities and services such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and sewer, and schools; or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services;
vi. It will not create excessive additional requirements at public expense for public facilities and services and will not be detrimental to the economic welfare of the community;
vii. It will not involve uses, activities, processes, materials, equipment or conditions of operation that will be detrimental to any persons, property, or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare or odors;
viii. It will have vehicular approaches to the property, which shall be so designed as not to create an interference with traffic on surrounding public thoroughfares; and ix. It will not result in the destruction, loss, or damage of a natural, scenic, or historic feature of major importance.

Additionally, section Sec. 26-6.405.L.i.x states that outdoor dining shall conform to the following:
A Restaurant with Outdoor Dining must meet the following requirements:

I. The Outdoor Dining area may not be fenced.
II. The Outdoor Dining area may encroach the public right of way only if it leaves clear at least a 4' clear walkway.
III. Outdoor dining furniture must be made of aluminum, stainless steel, painted metal, or durable finished wood.

Staff notes that the Outdoor Dining area standards specifically states that it "may not be fenced". Staff believes that this was included erroneously and should have included specific fencing or screen standards. Staff requests that the Board of Zoning Appeals specifically waive that requirement in their recommendation.

**Recommendation**

The Board of Zoning Appeals may wish to consider the following motion:

*Motion to forward to the Town Council a favorable recommendation to approve BZA Docket No. 20-004 with the following conditions:*

1. 313 Ridge Tap Room will fully implement their approved landscaping plan prior to opening the patio.
2. 313 Ridge Tap Room will remove the chain link fence at the rear of their shared parking lot and replace it with a solid 6' high fence the length of the parking lot.

## SPECIAL USE AND SPECIAL EXCEPTION CONDITIONS OF APPROVAL

The Munster Board of Zoning Appeals is authorized to hear petitions for special uses and special exceptions and to forward the petition to the Munster Town Council with a recommendation to approve, a recommendation to deny, or no recommendation. The Board of Zoning Appeals may also recommend reasonable conditions and restrictions. Sec. 26-854 of the Munster Municipal Code states that no special use shall be granted by the board of zoning appeals unless the special use meets the following conditions:

1. Is necessary for the public convenience at the location. Explain why this statement is true in this case:

Attached

2. Is so designed, located and proposed to be operated that the public health, safety and welfare will be protected. Explain why this statement is true in this case:

3. Will not cause substantial injury to the value of other property in the neighborhood in which it is to be located. Explain why this statement is true in this case:

4. Except in the case of planned developments, conforms to the applicable regulations of the district in which it is to be located. Explain why this statement is true in this case:

***Attach additional pages if necessary***

**Is it necessary for the public convenience at the location. Explain why this statement is true in this case:**

Our patio space is necessary to enhance the public's experience and enjoyment. The customer's experience is the main reason people visit our establishment. The patio will provide a place in our community for the public to enjoy sitting outside while patronizing 313 Taproom.

**Is so designed, located and proposed to be operated that the public health, safety and welfare will be protected. Explain why this statement is true in this case:**

Our completely open-air patio space is located on our property next to our building. The patio is set back from Ridge Road and away from the parking lot. The patio is petitioned off by a wood fence separating our property and the Citco gas station to the east. There is wrought iron fence on the North and South of the patio with unobstructed views from Ridge Road and the parking lot. The south fence will have an emergency exit only gate. The only access to the patio is by going in and out the double doors from the inside of the building. Patrons will come in through the main entrance of the building and check in at the point of sale before being able to go out to the patio

**Will not cause substantial injury to the value of other property in the neighborhood in which it is to be located. Explain why this statement is true in this case:**

The outdoor patio will not have any negative value to other property in the neighborhood. The patio is located on the side of the 313 Taproom and will not negatively affect any of the surrounding businesses or the residential housing to the North of the parking. The patio will provide a comfortable outdoor space for people in the neighborhood to enjoy. The aesthetics of the patio will be inviting and enhance the overall appearance of the property. There will be no music after dusk and any noise from the patrons will be minimal based on the location next to the building.

**Except in the case of planned developments, conforms to applicable regulations of the district in which it is to be located. Explain why this statement is true in this case:**

The patio space is completed located on our property and adjacent to the main structure. The patio is set back from and does not exceed the building on the North and South. The addition of the patio conforms to all regulations set forth in the Town of Munster Article 26 Zoning Code.

The Hanas Propert
313 Ridge Road - Munster. IN

Martin Landscaping
Cedar Lake, IN
By: Doug Werner, RLA

North

Scale: 1" = 20'