

MUNSTER BOARD OF ZONING APPEALS
MINUTES OF REGULAR BUSINESS MEETING

Meeting Date: June 9, 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: 7:04 pm

Pledge of Allegiance

Members in Attendance:

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

Members Absent:

Sharon Mayer

Staff Present:

Tom Vander Woude, Planning Director (via Zoom)
Dave Wickland, Attorney (via Zoom)

Approval of Minutes:

Mr. Friedman suggested two amendments to the May 12, 2020 minutes.

Motion: Mr. Buksa moved to approve the amended minutes of the Munster Board of Zoning Appeals May 12, 2020 meeting.

Second: Mr. Friedman seconded the motion.

Vote: Yea – 4 Nay – 0 Abstain – 0. Motion carries.

Preliminary 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. The Town code permits one wall sign, Jewel has two and they are requesting a third; the maximum height of a wall sign is 3 feet and they are proposing a 5 feet tall sign; the permitted materials for a sign backer are metal or wood, they are requesting a sign that is vinyl on plex. Mr. John Streets from Doyle Signs said that Jewel is rolling out their drive up and go service at all their stores. This signage would provide permanent illuminated channel letter signs consistent with their other signs on the building. The sign is well sized on the storefront which is over 220 feet. The sign is placed closest to where the kiosk is in the store. The sign is consistent with their branding, visible during the day and night, but not too large or overpowering. He

says that if the sign variance is approved, it will be consistent with the intent of the code, which is to identify businesses and services.

Mr. Friedman asked if the drive up and go concept was due to the current pandemic. Mr. Doyle said that it was – it will promote safety by minimizing contact; people can place their order via phone or online, park in the parking lot and an employee will take the order to the car; all payment is conducted through the app. Mr. Friedman said that the front of the store is a fire lane that has not been enforced or monitored by the store and there has been a problem with pedestrians able to access the store safely. Mr. Doyle said that he is not aware of any issues with parking, but he will look into the location of the designated stalls. Mr. Friedman said the sign gives the impression that you can pull up to the front where the sign is. Mr. Doyle said there will be designated parking stalls. Mr. Doyle said that the plans show 8 parking stalls in the southwest-most section of the parking lot, so they are not intended to park under the sign. Mr. Friedman asked if they put signs by the parking spaces, whether that would require a variance. Mr. Vander Woude said that they could not be branded. Mr. Friedman said that given the lack of enforcement of the fire lane he would support parking signs in the parking lot rather than a sign on the wall, which misrepresents the situation by giving the impression that you can park there and would be another form of advertising.

Mr. Buksa asked Mr. Vander Woude whether the pylon sign on Jewel Osco is legal non-conforming. Mr. Vander Woude affirmed that it is. Mr. Buksa asked the applicant if he can negotiate the installation of a legal monument sign. Mr. Raffin said that the pick up and go language could be added to the monument sign. Mr. Raffin stated that he has been to other businesses, such as Chick-Fil-A, where they place you in specific parking spaces for pick up and they work successfully without a sign on the wall. Mr. Raffin said that Jewel-Osco has historically not complied with the requirements for the site, for example storing pallets of water outside the store.

Mr. Petersen said that it is confusing for Jewel to install a sign on the east side of the building and the parking spaces will be on the opposite side of the building and it will cause a tremendous amount of confusion and will create problems with people driving up and parking there, which is a concern because that area is a fire lane.

Motion: Mr. Buksa moved to set a public hearing for BZA Docket No. 20-007 with the contingency that they advertise and meet all requirements.

Second: Mr. Petersen seconded.

Vote: Yea – 4 Nay – 0 Abstain – 0. Motion carries.

- b. BZA Docket No. 20-008. NP Building Partners, LLC requesting the following variances in 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. Mr. Vander Woude said the applicant is building a medical office at the subject address. Last fall 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. They petitioned again to modify their plan to reduce the size and height of the building and the Board agreed that the changes were in keeping with their approval. When they called for locates, the

Wolverine pipeline company said they could not plant trees within their 60-foot-wide easement. Mr. Raffin pointed out that there are trees all along Columbia. Mr. Vander Woude said that Wolverine has stated that they have the authority to cut down trees and they will. Mr. Vander Woude said that the applicants are convinced of the legitimacy of the claim such that they are seeking a variance to comply with it. Mr. Vander Woude said that Wolverine has said that they will not permit anything greater than 5 feet in height, so the hedge can remain along the edge of the parking lot. Mr. Vander Woude said that the trees along the parking lot and in the area between the sidewalk and the street are proposed to be eliminated. Mr. Raffin said that there are places along the northeast edge where additional trees can be planted. Mr. Vander Woude said that the applicants have provided the easement language, emails between them and Wolverine, a manual that the pipeline company adheres to, and some court cases that the Wolverine Pipeline company provided to them. He said they believe the path of least resistance is to obtain a variance. Mr. Raffin said that this should have been done six months ago when they were doing due diligence. He asked if they would have received the original landscaping variances had they known that these trees would be eliminated. Mr. Vander Woude said that the applicant, when applying for the original variances, represented that they were making up for their lack of parking lot landscaping and trees by planting trees outside of the parking lot and around the building. Mr. Buksa said that he is a patient of Dr. McComis but he does not believe that will impact his judgment. Mr. Friedman said that the applicant should have conducted an adequate examination of the title work of this property which would have shown the easements and the pipeline; he would like to compromise, but would like to have as many trees as possible on the property. Mr. Koulourides suggested that the applicant redesign the parking lot to include more trees within the lot to keep the beautification of the site. Mr. Raffin asked if they would lose parking spaces. Mr. Vander Woude said that the site has received a parking variance already. He had suggested reconfiguring the lot to include more trees without reducing parking, but the project architect said that it would have required regrading and reconstruction and they prefer not to do that.

Mr. Brendan Crumlish stated that Mr. Vander Woude's report is accurate. He said the Wolverine Pipeline Company has monitored the construction site and objected to the installation of trees. He said in January they received the court order with information on the easement and several hundreds of pages of guidelines. He said that there are a couple of court cases that exempt pipelines from municipal ordinances. Mr. John Reed said that he is the attorney for the applicant. He said that when it came time to pull the power service underground, the Wolverine Pipeline company became involved. He said that building things on pipelines is not uncommon but should be avoided. Mr. Raffin asked if they knew the depth of the pipe. Mr. Kraus, attorney for Wolverine Pipeline company, said that the top of the pipe is 3'-8" down and the pipe is 16" in outside diameter. Mr. Raffin asked if ornamental trees can be planted near and around pipelines, since all along Columbia Avenue there are mature trees. Mr. Kraus said that the industry has decided to object to trees because they are an integrity threat. They define the shrub rule at 5 feet and are allowed to cut anything under their easement. They move high amounts of gasoline and diesel fuel under high pressure and strenuously object to planting trees in their easement. They rely on federal law, the pipeline safety act, code of federal regulations, title 49 part 195. He drew attention to a drawing of a typical pipeline maintenance activity. Mr. Raffin asked if they used a trench box rather than open cut. Mr. Kraus said that they have, but they will not give up their right to open cut. Mr. Raffin asked Mr. Wickland to review the easement and provide a legal opinion for the next meeting.

Motion: Mr. Buksa moved to set a public hearing for BZA Docket No. 20-008 at the next meeting.

Second: Mr. Friedman seconded.

Vote: Yea – 4 Nay – 0 Abstain – 0. Motion carries.

Public Hearings

- a. **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.**

Mr. Vander Woude said that the preliminary hearing was held in May. The applicants are requesting a 2-foot variance from the side setback. There is a gas and electric line that runs through their backyard and the Indiana electrical code requires that the pool be a minimum of 5 feet from it, which means they must install their pool 3' from the side lot line. The minimum side setback for a pool is 5 feet. He said this standard is taken from the swimming pool code, not the zoning ordinance, so the criteria are different. The criteria are to preserve, protect and promote the public health, safety and welfare; protect the general public from damage and/or injury which may be caused by the faulty and uncontrolled construction or maintenance of swimming pools and preserve the value of adjoining private property.

Mr. Petersen asked Ms. Olczak the height of her fence. Ms. Olczak said it is six feet. Mr. Raffin confirmed that meets code. Mr. Raffin opened the public hearing. No comments. Mr. Vander Woude said he did not receive any written comments. Mr. Raffin closed the public hearing. Mr. Raffin asked whether the notice requirements had been met. Mr. Vander Woude confirmed that they had.

Motion: Mr. Friedman voted to approve BZA Docket No. 20-006

Second: Mr. Buksa seconded.

Vote: Yea – 4 Nay – 0 Abstain – 0. Motion carries.

- b. **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.**

Mr. Raffin asked whether the public notice requirements had been met. Mr. Wickland said they had. Mr. Vander Woude said that this petition was heard at a preliminary hearing last month. The proposal is to reuse two buildings on 8319 Jackson Avenue as single-family homes. The current zoning CD-4.A is a mixed use district, residential uses are permitted but only on the upper floors, the ground floors must be used for commercial purposes. Mr. Vander Woude said prior to being zoned CD-4.A, the property was zoned C-1 which was an exclusively commercial district, so the property has been legal non-conforming for 15 to 30 years. The proposal is to rehabilitate and reconfigure them from convents to single-family home. He noted that the subject property is located in an area where the predominant use is legal non-conforming single family. He said that granting a use variance requires a finding that there is a hardship in using the property under the current zoning. He said that his previous staff report included a recommendation to give an unfavorable recommendation to the Town Council and rezone the entire area to permit single family uses. At the preliminary hearing, the applicant requested that they be given a use variance on the condition that the property reverts to a legal non-conforming status. He said that the staff report has an alternative recommendation for a favorable recommendation that includes the condition that if any one of the events listed in Section 26-6.122.C that would result in the loss of a legal nonconforming status occurs, the use variance would expire. Mr. Vander Woude said that if a developer was interested in knocking down the building and building a mixed use project, he could do so because the property would still be considered CD-4.A.

Mr. Buksa said he was in favor of forwarding a recommendation to the Plan Commission to rezone.

Mr. Petersen disclosed that his law office has provided legal representation to the applicant in commercial and residential eviction services, but he believes that does not constitute a conflict of interest.

Mr. John Reed stated that he represents the petitioner Big Star Developments. He said that this variance would put the applicant back to the same status as the neighboring properties. He said adding the condition of Section 26-6.122.C would make it a legal nonconforming use and if it ever was developed as a transit oriented development it could. He said the hardship for the property is the lack of traffic through that area, which means there is no economic use for the property. He said he doesn't think they can get a commercial tenant to lease the space off the commercial street.

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

Mr. Raffin said he supports the variance to turn these into legal non-conforming because it fits into the current neighborhood and will be able to transform into a mixed-use development in the future.

Mr. Buksa asked if the zoning of the property and whether it is included in a transit development district would affect whether the Town captures the property tax revenue. Mr. Vander Woude stated that a more intense use would generate more property tax revenue and the increment would be captured in the transit development district, but the boundaries of that district have not been drawn yet.

Motion: Mr. Buksa moved to forward to the Town Council a favorable recommendation to approve BZA Docket No. 20-005 with the condition that the property will be treated as a legal nonconforming use within the CD-4.A district and the use variance will expire upon the occurrence of one of the events listed in Munster zoning ordinance Section 26-6.122.C:

1. Damage or Destruction of Building or Structure.

If any Building or Structure used for a Nonconforming Use is damaged or destroyed by any means:

- a. to an extent of more than 50% of the Full Value of the Building or Structure, no reconstruction or repairs shall be made unless the Use of every portion of the Structure is made to conform this Article; or
- b. to an extent of 50% or less of the Full Value of the Building or Structure, it may be reconstructed or repaired and the Nonconforming Use continued, if the reconstruction or repair is started within one (1) year of such damage or destruction and is diligently pursued to completion.

2. Change of Nonconforming Use of Building or Structure.

If a Nonconforming Use of a Building or Structure is enlarged, increased, or extended to occupy more or such Building or Structure than that occupied by such Use on the Effective Date of this Article, any amendment of this Article, or any amendment to the Zoning Map, or if any such Nonconforming Use is moved to any other land or is moved in whole or in part to any other portion of the Building or Structure occupied by such Nonconforming Use at such time, the legal status of such Nonconforming Use will terminate, and thereafter the Use of such of the Building or Structure must comply with this Article.

3. Cessation of Nonconforming Use of Building or Structure or Grant of Conditional Use.

If any Nonconforming Use of a Building or Structure ceases for any reason for a continuous period of one (1) year or more, is changed to a conforming Use, or a Conditional Use is granted with respect

thereto, or if the Building or Structure in or on which such Use is conducted or maintained is moved for any distance whatever, for any reason, then the legal status of such Nonconforming Use shall terminate and any future Use of such Building or Structure must conform to this Article.

4. Removal of Structure Used for Nonconforming Use.

If any Building or Structure in or on which any Nonconforming Use is conducted or maintained is removed, then the legal status of such Nonconforming Use shall terminate and the subsequent Use of the land on which such Building or Structure was located and the subsequent Use of any Building or Structure thereon must conform to this Article.

Second: Mr. Friedman seconded the motion.

Vote: Yea – 4 Nay – 0 Abstain – 0. Motion carries.

Findings of Fact

- a. **BZA 19-009 Guy Costanza/GM Contracting requesting developmental standards variances from Section 26-931 to reduce the number of required parking spaces and from Section Sec. 26-602 to reduce the required setback in order to construct a 2800 square foot building and parking lot for use as a café at 407-411 Ridge Road.**

Motion: Mr. Buksa moved to approve the findings of fact for Docket No. 19-009.

Second: Mr. Friedman seconded.

Vote: Yea – 4 Nay – 0 Abstain – 0. Motion carries.

- b. **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.**

Motion: Mr. Buksa moved to approve the findings of fact for Docket No. 20-004.

Second: Mr. Friedman seconded.

Vote: Yea – 4 Nay – 0 Abstain – 0. Motion carries.

Additional Business/Items for Discussion

None.

Adjournment:

Motion: Mr. Buksa moved to adjourn the meeting.

Second: Mr. Petersen seconded the motion.

Vote: Viva voce. Motion carries.

Meeting adjourned at 8:18 p.m.

Chairman Roland Raffin
Board of Zoning Appeals

Date of Approval

Executive Secretary Thomas Vander Woude
Board of Zoning Appeals

Date of Approval