

**MUNSTER BOARD OF ZONING APPEALS**  
**MINUTES OF REGULAR BUSINESS MEETING**

Meeting Date: May 12, 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:** 7:00 pm

**Pledge of Allegiance**

**Members in Attendance:**

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

**Members Absent:**

**Staff Present:**

Dustin Anderson, Town Manager  
Tom Vander Woude, Planning Director  
Dave Wickland, Attorney (via Zoom)

**Approval of Minutes:**

**Motion:** Mr. Buksa moved to approve minutes of the Munster Board of Zoning Appeals March 10, 2020 meeting.

**Second:** Ms. Mayer seconded the motion.

**Vote:** Yea – 5 Nay – 0 Abstain – 0. Motion carries.

**Preliminary 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. Raffin introduces the agenda item. Mr. Vander Woude described the petition. He said the property owners are seeking a variance to reduce the side setback for a swimming pool so they can install a pool 3 feet from the south property line. He said there is a gas and electric line that bisects their yard. The Indiana Residential Code prohibits any pool from being installed within 5' of an underground electric line. They're seeking to install their pool 5' from that line which requires them to move the pool to 3 feet from the side lot line. The town swimming pool ordinance requires a set back of 5 feet from a side lot line. He said they can't get a variance from the electrical code but there is a provision in our code that allows the BZA to grant variances from the swimming pool standards. He said the criteria are different from a zoning variance and are listed in the staff report. He noted that all other accessory structures are only required to be setback 3 feet from the property line and that the town requires a 3-foot impervious walkway around pools. Mr. Raffin asked whether a shed or garage could be built 3 feet from the property line. Mr. Vander Woude said that it could. Mr. Raffin said that he could see the rationale for an inground pool having a greater setback, but not an above ground pool. Mr. Vander

Woude said that he wasn't sure why the setback is 5 feet. Mr. Anderson said that he has an aboveground pool that is 3 feet off the property line and he suspects that the 3 feet allows him to mow around his pool. Mr. Buksa said that he has a relationship with the petitioners, he served as a track coach for their daughter, their daughters go to school together, and Mrs. Olczak is his wife's assistant volleyball coach but he doesn't believe that constitutes a conflict of interest.

Carly Olczak said that they are trying to maximize the privacy of the backyard and the safety of those who are using the pool and get the most of the space in the backyard. The garage directly behind the property line offers privacy and there will be a concrete patio in front of the pool which will have a gazebo, so the pool will be blocked on all four sides and they can still use the rest of the yard for the children. That side of the house has a bathroom so it's convenient for pool traffic.

Ms. Mayer said that from the photographs it looks like there was already a pool in the backyard over the electric lines. Ms. Olczak said that was an Intex pool that can be put up and taken down each summer, which they used to test the location of the pool.

**Motion:** Mr. Buksa moved to set a public hearing for BZA Docket No. 20-006 at the next meeting.

**Second:** Mr. Petersen seconded.

**Vote:** Yea – 5 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. Vander Woude said that the property is located at the alley south of Ridge Road and Jackson Street. He said there are two houses on the property which they know anecdotally were owned by the Catholic Church and used as a roominghouse for nuns or priests. He said the petitioner purchased these houses and is seeking to redevelop them as single-family homes. He showed that the property is located in CD-4.A mixed use district with an overlay that prohibits ground floor uses, so the permitted uses are business uses and mixed use buildings with ground floor commercial uses. A single-family home is not permitted. He said the petitioner is requesting a use variance to reuse the property as a single-family home. He presented an analysis of the type of uses in the area. The adjacent land uses are commercial to the north and to all other directions are single family, mostly rental. The primary building type in this area, even on Ridge Road, is a residential type building. He said that a use variance has a higher bar and requires the petitioner to prove an actual hardship. He said that he's recommending against granting a use variance because this property is not unique among the adjacent properties. The entire area is zoned mixed use. His recommendation is to think about rezoning the area to permit single family uses. He said that prior to it being zoned CD-4.A, it was a C-1 commercial district for decades, with the idea that someday the properties would cease to be used for single family uses. Mr. Raffin asked if the commercial area is also zoned CD-4.A. Mr. Vander Woude described the limits of the district. Mr. Raffin said that all the existing single-family property is legal nonconforming. Mr. Buksa said that the property was a convent for the Benedictine Sisters that served at St. Thomas More Church and School. Ms. Mayer said that because the property has been vacant for a year, it cannot be used as a residential property but that it can't be used as commercial. Mr. Vander Woude said that was correct. It can't be used for single-family, but it could be remodeled and used for commercial. Ms. Mayer asked if we were encouraging commercial uses in that neighborhood. Mr. Vander Woude said that the zoning has been commercial for 15 to 30 years which would indicate that the Town wanted the residential uses to be phased out and become commercial uses. Mr. Raffin asked whether the area could be zoned as a multi-

use area and include single-family residential as an option. Mr. Vander Woude said that it could and that is why he is recommending that if the Board thinks single family is a good use here, they should ask that the Plan Commission rezone it rather than grant a one-off use variance. Mr. Raffin said that the area is residential and will probably stay residential until the train comes. He said that he doesn't want someone to be held back from their project now but thinks the Town should have a plan for mixed use in the future. Mr. Buksa asked if they should ask the petitioner to advertise for a public hearing or refer them to the Plan Commission. Mr. Vander Woude said that if the Board is sympathetic to their case for the variance, they can advise them to proceed, but if they think that the issue should be referred to the Plan Commission, they can advise them to withdraw their application and not have a public hearing, though they can if they want.

Mr. John Reed said that he is here with the petitioner Harry Stariha of Big Star Developments. Mr. Reed said that he does not disagree with Mr. Vander Woude's position to develop an overlay but it doesn't help the petitioner with a current problem. He said the two buildings used to be combined by a walkway. The Big Star folk had it removed and now it's two separate properties. He said in order to have any use that is reasonably practicable in today's market it must be a single family residential use. This would be the only commercial property in what is basically an R-1 single family neighborhood and it has no market value at that use right now. When the train comes, that may be the time for commercial developers to step in using the current zoning. He said that they're not asking to be different from everybody else but the same as everybody else. He said they're asking for a use variance to use the property as R-1 and he would like to condition the use variance on being classified as a nonconforming use, which is what all the neighboring properties are now.

Mr. Raffin said that he would have a hard time seeing the two houses rented out as commercial and if they don't get fixed up, you'll have two houses getting more dilapidated. He asked Mr. Wickland if he could keep this as legal nonconforming, but keep it as a CD-4.A in case someone wants to redevelop it in the future. Mr. Wickland said that they could put conditions on it or a rezoning would work, in any case, the Town Council would have to approve it. Mr. Reed said that if they rezoned it to R-1, it would change the use category to something different from the neighbors and it wouldn't revert if the property was destroyed.

Mr. Raffin asked whether the property would be single family and not have multiple people living in it. Mr. Reed said that it would be single family with a substantial investment. Ms. Mayer asked if there were two residences on a single lot, would it be subdivided into two. Mr. Reed said that they would eventually seek the subdivision for two lots. Mr. Reed said that he thinks they were originally two lots. Mr. Petersen said that he represents Big Star Development in eviction matters but believes that representation is sufficiently removed from this petition that he would render a decision impartially.

**Motion:** Mr. Buksa moved to set a public hearing for BZA Docket No. 20-005 at the next meeting.

**Second:** Mr. Petersen seconded.

**Vote:** Yea – 5 Nay – 0 Abstain – 0. Motion carries.

## **Public Hearings**

- 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.**

Mr. Vander Woude said that this project has been before the board a few times now. Because of the size of the property and the proposed development, the petitioner is requesting a few variances: from the off street parking standard, a restaurant with 31 rather than the required 42 spaces; two setback requirements, a minimum planting strip of 20 feet at the front property line, they are proposing a 4.5 to about 13.5 foot planting strip, and from the 35 foot building setback, they are proposing between 11.5 and 20.5 feet. He said specific board requests are listed in the staff report: they've asked for a specific end user, access easements between the adjacent properties, a tree replacement plan, and that the project comply with the standards of the new code. He said that some revisions had been made to the plan, the building was moved closer to the road and the stormwater plans were adjusted to eliminate the pond in the northwest corner, add a raingarden, and modify the parking lot grade to store water. He said his recommendation is to approve the parking variance upon the condition that the number of seats in any restaurant be limited to 77 to reflect the alternative parking calculation in the code and the setback variances on the condition that the project comply with the current code. He thinks that common sense conditions would allow the project to move forward and let the Plan Commission deal with the development plan. He said he received an email from resident Michael Goepfort, 10380 Oxford Pl. which he read into the record, which said that the condition of limiting the patrons does not take into consideration customers who may walk or bike to the restaurant or those who may park in the train parking lot and do not need to use the parking spaces on site; a drive through for those on their way to the train may be an even better use of the parking area.

Mr. John Reed said that he has Mr. Costanza with him. He said they have discussed the parking space issue and he said that the building has been reduced to 2500 square feet, so they would not be able to fit 77 seats, so they have no issue with the condition. As to the new zoning ordinance, he said it requires buildings to be two stories, which would cause additional headaches for the parking situation. He said that this may be more appropriate for the Plan Commission to address through site plan approval when they have an end user. The new zoning code will create more challenges for the site. Mr. Raffin asked Mr. Reed whether the client would have a problem providing cross-access easements and a tree replacement plan. Mr. Reed said that they would not have a problem. Mr. Reed said that they would meet or exceed the landscaping requirements and that cross-access benefits all the properties – the more access between parking lots rather than darting out onto Ridge Road is preferable for everyone.

Mr. Raffin opened the public hearing. No comments. Mr. Raffin closed the public hearing.

Mr. Petersen asked Mr. Wickland whether public notice had been given. Mr. Wickland said that it had and that it had been continued several times.

Mr. Raffin said that he does not have any problem limiting the number of seats to 77 and thinks we should make sure there are access easements and a tree replacement plan. Mr. Raffin said that there should be a design concept for the Plan Commission. He wants to make sure that although there won't be a second story, it should have the appearance of the other buildings on that road, whether that means a fake second story, just so that it fits the plan for the transit district. Mr. Reed says that Guy says no problem, the plan is all or almost all masonry, no split face block, no man-made stone. Mr. Raffin said to make sure the height is consistent with the district. Ms. Mayer asked why Tom wanted this to go with the new code. Mr. Vander Woude said, first, that was something that he heard from the Board and second, the old code included a design philosophy, which was suburban in style, in the new code we

have a different cohesive set of standards, so the recommendation is that if we are going to deviate from one cohesive set of standards, the old code, we should do so in a way that implements an alternative set of cohesive standards which are those included in the new code. He said if you approve only the setback variances, but you don't have all the other design standards attached to them, you're not going to get the type of project that you want to see in that area, and what he has heard from the board is that they want to see a project that exemplifies current standards; if we're going to change standards we should adhere to them in total, rather than creating a hodge-podge. Mr. Reed said that as long as that doesn't require an actual second story, the applicant doesn't have a problem with it. He said it seems more like a Plan Commission issue, whatever makes the most attractive building that the Plan Commission would approve, that would be the goal; he just doesn't want a major impediment to come up such as going from one to two stories. Mr. Raffin said that he understands that because its such a small lot, he would have trouble having an occupied space on the second floor. Ms. Mayer said that a second story would require an elevator and a whole slew of other things; the Boyer development on Calumet is an example of how this could work. She said that the motion would be that the petition would be subject to the new code except for the requirement that the building have second residential story. Mr. Reed said that petitioner agrees to that.

**Motion:** Ms. Mayer moved to approve the requested variances on the conditions that the number of seats in the building be limited to 77 and that the building must adhere to all the building standards of the current zoning code, the height of the building must be equivalent to two stories though it is not required to have an actual, occupiable second story.

**Second:** Mr. Buksa seconded.

**Discussion:** Mr. Petersen asked whether the building was being built on spec. Mr. Reed said that is correct, there is no end user. He thinks that a café or a professional office is the most likely use. Mr. Petersen asked why the builder doesn't identify an end user and then come for the variance, his concern is that they grant the variance and the building is never built and it's a big waste of time or that the building is built and never used and they have a worse situation than they have presently which is a space that could be used for any of these uses. Mr. Reed said it's a question of timing, sometimes the petitioner is the end user, but Mr. Costanza is the developer but not an end user and to successfully market it you need the approval to do what they want to do. The densest parking requirement would be for a café, so they're painting a highest use scenario. In order to market the property, they need to be able to show people a footprint that was approved to be built. If they find a potential tenant, they may lose them if it takes half a year for approvals.

**Vote:** Yea – 5 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.**

Mr. Vander Woude said that this petition was heard at a preliminary hearing last month. The petitioners are the operators of 313 Tap Room, which is a self-serve bar at 313 Ridge Road. They have remodeled the building and constructed an outdoor dining area. They are now seeking a conditional use permit to use the patio. They have provided plans. He said the staff has no concerns about safety since its located about 70 feet from Ridge Road; about security since its gated off with an emergency exit in the back; or about noise since the patio is about 150 feet away from the nearest residential property. He said that after the preliminary hearing two concerns came to the staff's attention, they are recommending that their approved landscaping plan be completed and that they replace with a six foot solid fence the dilapidated chain link fence on the north side of the parking lot that they use through a shared parking

agreement. Mr. Hanas said that they are working on their landscaping plan, but its been cold and they're waiting to make sure there is no more frost, they're starting this week; regarding the fence, its not their property and they don't know how they can put up a fence on someone else's property; and they were only open 3 months when they had to shut down for two months and they're strapped and can't put up a fence.

Mr. Raffin opened the public hearing. Mr. Vander Woude said that he received correspondence from Guy Costanza who said that he is a neighboring property owner and thinks the outdoor patio will be a nice addition to the town and he has no objection to the outdoor patio. Mr. Raffin asked who owned the shared parking lot. Mr. Vander Woude said Guy Costanza. Mr. Raffin asked since they're sharing parking can they come to an agreement to get a nicer fence within a year or so since it would improve the whole neighborhood. Mr. Mark Foreit said that beauty is in the eye of the beholder. He said that the town fence on their east border does not look much better than the one behind their property. He said maybe they can all get together and the town can replace their fence and Guy Costanza can replace his. Mr. Vander Woude said that the code requires that a commercial property install a screening fence adjacent to residential property; the only reason they didn't initially require it is because it is not on the petitioner's property, but the staff has spoken to Guy Costanza and believes that he would allow them to replace the fence. Mr. Raffin said half the slats are missing. Mr. Vander Woude said that it's a chain link fence with plastic woven through the links. Ms. Mayer said that she understands that the Town would want them to replace the fence, but if the fence is in good condition, could they just replace the slats. Mr. Foreit said that the fence is sturdy, but its missing slats and a good coat of paint would enhance the look of the fence. Mr. Raffin asked who maintains the weeds; Mr. Foreit said that Guy Costanza does, but he thinks after tonight it may become their responsibility. Mr. Raffin asked whether it was a code enforcement issue. Mr. Vander Woude said that it is, and it's a chain link fence with trees growing through it so it should be replaced. He said that when there is an increase in the intensity of use, that's when you address any nonconforming aspects of a property which is why they are recommending that it be done in connection with this request. Mr. Friedman asked whether they can impose a condition that the fence be replaced within 12 months. Mr. Wickland said they could. Mr. Friedman said that he would be in favor of imposing a condition that they replace the fence within 12 months. Mr. Buksa said that he is uneasy requiring them to replace something that is not theirs. Mr. Friedman asked for clarification as to where the fence was located. Mr. Vander Woude said it is on Guy Costanza's property. Mr. Raffin asked whether the Town should be sending Mr. Costanza a letter telling him it's time to replace the fence. Mr. Vander Woude said that it is not beyond their ability to replace the fence. Mr. Raffin asked whether they should discuss it with Mr. Costanza at the next meeting. Mr. Friedman asked whether they can require someone to replace a fence that is not theirs. Mr. Wickland said no, but because they have a shared parking agreement, they should get together and figure something out with respect to the fence. Mr. Foreit said that the fence should be replaced, there are issues with building something on someone else's property, so in the spirit of enhancing the aesthetics they will speak with Mr. Costanza, but at this time, financially it would be difficult to replace the fence at the current time. They will speak to Mr. Costanza about painting the fence and wouldn't be opposed to replacing the fence within 24 months.

**Motion:** Mr. Buksa moved to forward to the Town Council a favorable recommendation to approve BZA Docket No. 20-004 with the condition that they fully implement their approved landscaping plan prior to opening the patio.

**Second:** Ms. Mayer seconded the motion.

**Discussion:** Mr. Friedman asked whether Mr. Buksa would amend his motion to include a condition that the applicants work with Guy Costanza to replace the fence within 24 months. Mr. Buksa said that the

Town's remedy is to approach Mr. Costanza, who can work with the applicants on a private basis, and he declined to amend his motion.

**Vote:** Yea – 5 Nay – 0 Abstain – 0. Motion carries.

#### **Findings of Fact**

- a. **BZA Docket No. 20-001 Michael Dust requesting developmental standards variances from TABLE 26-6.405.A-3 of the Munster Zoning Ordinance to exceed the maximum lot coverage for accessory structures and the maximum garage size to construct an additional 3-car garage at 1100 Fran-Lin Parkway.**

**Motion:** Ms. Mayer moved to approve the findings of fact for Docket No. 20-001.

**Second:** Mr. Friedman seconded.

**Vote:** Yea – 5 Nay – 0 Abstain – 0. Motion carries.

- b. **BZA 20-002 Community Foundation of Northwest Indiana requesting developmental standards variances from Table 26-6.405.A-7 to exceed the maximum lot size and reduce the frontage buildout in a CD-4.B District, from Section 26-6405.O.1.d to exceed the number of required parking spaces by greater than 10%, and from Section 26-6.122D.2.b to alter a nonconforming sign in order to resubdivide property and expand a parking lot at 541 Otis Bowen Drive.**

**Motion:** Mr. Buksa moved to approve the findings of fact for Docket No. 20-002.

**Second:** Mr. Petersen seconded.

**Vote:** Yea – 5 Nay – 0 Abstain – 0. Motion carries.

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

None.

#### **Adjournment:**

**Motion:** Mr. Friedman moved to adjourn the meeting.

**Second:** Mr. Petersen seconded the motion.

**Vote:** Yea – 5 Nay – 0 Abstain – 0. Motion carries.

Meeting adjourned at 8:36 p.m.

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Chairman Roland Raffin  
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