To: Members of the Board of Zoning Appeals

From: Tom Vander Woude, Planning Director

Date: June 4, 2020

Re: **PUBLIC HEARING**

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.

Applicant:	Big Star Developments LLC represented by Abrahamson, Reed & Bilse
Property Address:	8319 Jackson Street
Current Zoning:	CD-4.A General Urban – A Character District
Adjacent Zoning:	North: CD- CD-4.A South: CD- CD-4.A East: CD- CD-4.A West: CD- CD-4.A
Action Requested:	Forward recommendation to Town Council
Additional Actions Required:	Findings of Fact Town Council Approval
Attachments:	Variance application Photos of property

Background

PRELIMINARY HEARING HELD MAY 12, 2020

In May of 2019, Big Star Developments, LLC purchased the property located at 8319 Jackson Street from the Bishop of Roman Catholic Diocese. The subject property is a single 0.3-acre parcel containing two residential structures which had been attached with a breezeway: a 1658 square foot single-story home and a two-story 2032 square foot home; and a two car garage. Photos of the property are attached to this memo.

The Town does not have any property records for these houses, but staff has learned anecdotally that they had been used as a residence for nuns; tax records indicate each house has 7 bedrooms.

Figure 1: Oblique view of subject property.

Figure 2: Existing buildings on subject property.

The applicant is proposing to rehabilitate and remodel the houses for use as single-family homes. Although the property was previously residential, it has been vacant for more than a year and can no longer be considered legal non-conforming in any way, which means it is subject to the current zoning standards.

The subject property is zoned CD-4.A (shown in the map below as gold). In this district, single-family homes are not permitted. In addition, there is special overlay on this area that prohibits ground floor residential uses (shown as a cross hatch). This means that residential is permitted only on upper floors provided that the ground floor is used for a commercial use.

Figure 3: Zoning of subject property. Note: property outlined in red; CD-4.A district shown in gold, CD-3.R2 shown in blue; CD-5 shown in maroon.

Discussion

Prior to the enactment of the current zoning ordinance in December 2019, at the time that the applicant purchased the property, the property was zoned C-1, which prohibited all residential uses. When the Town rezoned the property to CD-4.A, the intent was to promote the development of mixed-use buildings and increase residential density in the Ridge Road corridor and within 0.5 miles of the proposed South Shore station while also restricting standalone multifamily buildings. The subject property is approximately 1/3 of a mile from the proposed commuter rail station.

Adjacent Land Uses

The subject property is located on the edge of the Ridge Road commercial corridor. The predominant use on the 8300 block of Jackson is single-family residential rental.

Figure 4: Adjacent land use

Adjacent Building Types

The primary building type is single-family residential.

Figure 5: Single family residential building types in commercial use on Ridge Road.

Sec. 26-6804.I.1 of the Munster Zoning Code states that the BZA may hear and make recommendations upon petitions for use variances after holding a public hearing. The BZA may then recommend one of the following actions: approve the requested variances; approve the requested variances with conditions; or deny the requested variances. The final decision to grant a use variance lies with the Town Council

Variance Standards

The use variance process is established to provide relief to a property owner when, due to unique circumstances, compliance with the zoning code imposes a hardship on a property owner. The BZA is under no obligation to recommend a variance. It is the petitioner's responsibility to prove a hardship. 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 Use Variances:

A Use Variance 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;
iii. the need for the Variance arises from some condition peculiar to the property involved
iv. the strict application of the terms of this Article will constitute an unnecessary hardship if applied to the property for which the Variance is sought; and
v. it will not interfere substantially with the Comprehensive Plan.

Recommendation

The Board of Zoning Appeals may forward a favorable, unfavorable, or no recommendation to the Town Council.

Because this property is not unique among adjacent properties, will require a substantial investment to convert it into a single family home, and there does not appear to be a hardship with respect to the use of the property, staff does not support granting a use variance. If the Board of Zoning Appeals members believe that the blocks between Ridge Road and South Street should permit single family dwelling units, either by right or as a conditional use, staff recommends sending communication to the Plan Commission requesting that they study the possibility of rezoning the 8300 blocks of Monroe, Miller, Jackson, and Harrison.

Staff recommends forwarding an unfavorable recommendation to the Town Council.

Alternative Recommendation
At the preliminary hearing, the applicant's representative stated that they would like the property to be treated as a legal non-conforming use. Therefore, if the Board of Zoning Appeals finds that all the variance criteria have been met and would like to forward a favorable recommendation, staff recommends the following condition:

The use variance will expire upon the occurrence of one of the events listed in Munster zoning ordinance Section 26-6.122.C:

C. Nonconforming Use of Building or Structure.

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.

Petition BZA _____-_____
Date: _____
Application Fee: $_____
Sign Fee: $_____

Town of Munster Board of Zoning Appeals Petition Application

OWNER INFORMATION:

Big Star Developments, LLC
Name of Owner

(219) 712-4104
Phone Number

9727 Wildflower Lane, Munster, IN 46321
Street address, City, ST, ZIP Code

jpratlaw@aol.com
Email address

APPLICANT OR PETITIONER INFORMATION (if different than above):

N/A
Name of Applicant/Petitioner

Phone Number

Street address, City, ST, ZIP Code

Email address

PROPERTY INFORMATION:

Big Star Developments, LLC
Business or Development Name (if applicable)

8319 Jackson St. Parcel 45-06-24-277-006.000-027
Address of Property or Legal Description

mixed use
Current Zoning

APPLICATION INFORMATION:

Please select what this Application is for:

☐ **Variance** If yes, select one of the following: ☒ **Use** ☐ **Developmental Standards**

☐ **Special Use or Special Exception**

☐ **Administrative Appeal**

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

This parcel was recently rezoned by the town to mixed-use commercial/residential. As this property currently sits, it has no commercial value, but is purely residential. Once the South Shore extension happens this may change. At present, the property has lost its legal non-conforming use and is rendered virtually worthless. A return to R-2 legal non-conforming is being sought, subject to the new mixed-use zoning classification.

N/A
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_____ to act on my behalf as my agent in this petition and to furnish, upon request, supplemental information in support of this petition application.

Attorny-in-fact 4/27/2020

Signature of Owner ***Date***

Attorny-in-fact 4/27/2020

Signature of Applicant ***Date***

REQUIRED ATTACHMENTS

Required Attachments for Board of Zoning Appeals Applications

To ensure that adequate information is provided to the BZA, please check off each of these items and provide documentation to the Community Development Department at the time of submittal of the application.

ALL APPLICATIONS	Included	N/A
Narrative statement describing project	X	
Property owner consent (Signature page)	X	
Proof of Ownership (e.g. copy of tax bill)	X	
Plat of Survey depicting current conditions		X
Site Plan containing the following:		X
Boundary identification		X
Fire hydrant locations		X
Accessory structures		X
Parking lot design		X
Utility location		X
Building footprints		X
Proposed curb cuts		X
Drainage/detention plans		X
Traffic circulation		X
Ingress/egress locations		X
Major topographic information		X
Infrastructure improvements		X
Conditions of Approval Form (Note: complete the form specific to your petition)*	X	
Any other information that the BZA may find useful in determining whether the application is merited.		

* Unique conditions have been established for special use permits for public garages, gas filling stations, used car lots, garden centers, massage parlors, adult bookstores, tattoo parlors, and adult cabarets. Community Development staff will advise potential applicants of these at the pre-application meeting.

NOTE: If you checked any exhibits "N/A", please explain:

No change to the current use is proposed.

USE VARIANCE CONDITIONS OF APPROVAL (PAGE 1 OF 2)

The Munster Board of Zoning Appeals is authorized to hear petitions for use variances 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. Indiana Code 36-7-4-918.4 lists the legal criteria for a use variance:

1. The approval will not be injurious to the public health, safety, morals, and general welfare of the community. Explain why this statement is true in this case:

The variance sought is not being sought to change the character of the property, but to maintain its current character.

2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner. Explain why this statement is true in this case:

The use of the property will not change and it has been so used since 1963.

3. The need for the variance arises from some condition peculiar to the property involved. Explain why this statement is true in this case:

Zoning change initiated by Town of Munster.

USE VARIANCE CONDITIONS OF APPROVAL (PAGE 2 OF 2)

4. The strict application of the terms of the zoning ordinance will constitute an unnecessary hardship if applied to the property for which the variance is sought. Explain why this statement is true in this case:

This property has no commercial value at the present time, and if so used would not be consistent with the current neighborhood.

5. The approval doesn't interfere substantially with the adopted comprehensive plan. Explain why this statement is true in this case:

This request, if approved, would return the property to its current character and situate it similarly to all properties in the neighborhood

Attach additional pages if necessary

PHOTO 1 OF 8319 JACKSON STREET

PHOTO 2 OF 8319 JACKSON STREET

PHOTO 3 OF 8319 JACKSON STREET

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