BOARD OF ZONING APPEALS
STAFF REPORT

To:	Members of the Board of Zoning Appeals
From:	Tom Vander Woude, Planning Director
Meeting Date:	July 13, 2021
Agenda Item:	BZA Docket No. 21-007
Hearing:	**PUBLIC HEARING**
Application Type:	Developmental Standards Variance
Summary:	Good Oil Company Inc. requesting a variance from the minimum setback standards for an accessory building to reuse an existing nonconforming building as a car wash at the Marathon gas station at 9451 Calumet Avenue.

Applicant:	Good Oil Company, Inc. represented by Justin A. Schramm
Property Address:	9451 Calumet Avenue
Current Zoning:	CD-4.A General Urban Character District
Adjacent Zoning:	North: CD-4.A South: CN Railroad East: CD-4.R-4/CD-3.R-1 West: Maple Leaf Crossing PUD
Action Requested:	Approve variance
Additional Actions Required:	Findings of Fact
Staff Recommendation:	**<u>Approval with conditions</u>**
Attachments:	Letter from Don Good of Good Oil Co Inc. BZA 21-007 variance application Site plan prepared by Hamstra Builders, Inc. dated 06.28.2021

Figure 1: Subject property with accessory building outlined in red

BACKGROUND

Good Oil Company Inc. is the owner of the property located at 9451 Calumet Avenue. The site contains two buildings: a Marathon gas station and convenience store with an attached automobile service center and a 965 square foot accessory building that was formerly used as a car wash, but most recently as an alignment bay for the automobile service center. The gas station and convenience store are operational; the service center and accessory building have not been in use for over a year.

The applicant is proposing to remove the vehicle lifts and other equipment from the accessory building and to reuse it as a car wash. The accessory building does not meet the minimum setback requirements of the Munster Zoning Ordinance and is no longer legal nonconforming.

The subject property received variances in 2013 from the parking lot fencing requirements, landscape irrigation requirements, and internal landscaping requirements of the Munster Zoning Ordinance.

A car wash is a conditional use in the CD.4-A district. An application has been submitted for the conditional use which must be granted in addition to the variance.

DISCUSSION

TABLE 26-6.405.A-6 of the Munster Zoning Ordinance defines the minimum setback for an accessory structure as *20 ft. min + Principal Building Front Setback.*

The principal building on the site is the convenience store which is set back approximately 112 feet from the Calumet Avenue right-of-way. The accessory building would be required to be set back to 132 feet. The actual setback of the building is approximately 112 feet.

Figure 2: Subject property with building setbacks shown.

SECTION 26-6.122.D.3 of the Munster Zoning Ordinance states:
If any Nonconforming Building, Structure, or Improvement ceases to be in use for any reason for a continuous period of one (1) year more, is changed to a conforming Building, Structure, or Improvement, is used for a conforming Use, a Conditional Use is granted with respect thereto, or if the Building, Structure, or Improvement is moved for any distance whatever, for any reason, then such Building or Structure shall not be used without conforming to this Article.

The accessory building has not been in use for over a year and is therefore no longer legal nonconforming.

The petition was presented to the BZA at a preliminary hearing on June 8, 2021. At that hearing, the BZA asked the applicants an updated rendering of the site plan depicting current conditions including the closure of 45th Street, a copy of the lease between the owner and the operator of the gas station and proposed car wash, and either an appearance by the tenant at the public hearing or an affidavit of representation.

The applicant provided a revised site plan, which is attached to this memo. The applicant has provided a copy of the lease with the operator, which has been reviewed by BZA attorney Dave Wickland; he has found it to be sufficient for the purposes of authorizing the applicant to apply for the variance.

VARIANCE STANDARDS

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

A Variance from Development Standards 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; and
iii. the strict application of the Development standards will result in practical difficulties in the use of the property.

RECOMMENDATION

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

Motion to approve a variance from the minimum setback for an accessory structure at 9451 Calumet Avenue.

Staff recommends the following conditions:

1. *The variance is for the purpose of operating a car wash in the existing accessory building.*
2. *The Munster Town Council approves a conditional use permit for a car wash at 9451 Calumet Avenue.*

Good Oil Co Inc
1201N US35 -:- Winamac, Indiana 46996
DON A. GOOD Phone: [574] 946-4863 - [574] 946-3742 — Fax: [574] 946-4563 DEAN K. GOOD

We agree wholeheartedly that the site is not want we want it to be. It is not representative of the type of facility we want to represent our 80+ year legacy or our family business. We also acknowledge that in part this has been due to a failure on our part to maintain a top-level operator in the facility.

We do want to shed some light on what has been the main factors that have made us hesitant in investing the time and capital in the site to bring it up to the level we want to represent us or what you are wanting for your community. This is not intended to make excuses but to shed light so that perhaps we can reach a point where we can look forward vs basing decisions on what the perception of who we are and what we represent.

We have been in a holding pattern on this site from the time we purchased it from Marathon Petroleum. Marathon disclosed to us when they divested the site that they were doing so as they were informed there was an underpass project being planned on Calumet Ave to go under the railroad tracks that would make the site inaccessible and therefore condemn the site. They indicated while they could not give a timeline or even the probability that the project would happen, they had made the decision to not invest in the site because of the possibility and their intent to exit dealer operations.

With that knowledge we made the decision to go ahead with the purchase and work with and lease the site to the occupant who had a successful repair operation at the location while we waited for the direction timeline of the underpass to develop. The operator ran a quality business and did well until problems with his health and personal life forced him to leave the business.

For the next couple years, we had different a operator in the location who ran bay operations. Eventually we learned that 45th street was going to be rerouted which resulted in the dealer asking to be released from his lease as he had concerns the loss of access from 45th St would cause a significant loss of business and he wanted to relocate. We agreed to release him and made arrangements to lease the front of the store for convenience and gas with the intentions of remodeling the location for such purposes.

While we were in the process of developing and bidding the project, we were informed Calumet was going to undergo extensive and lengthy construction in front of the store. We have copies of the plans that were started for the remodel to verify this was in process. The construction on Calumet basically made the site inaccessible from Calumet and with 45th St closed the site was basically dead. We then allowed the dealer in the site to exit his lease as there was no way for business to get in and out of the site.

The site has been either under the threat of condemnation from the underpass, impacted by the closure of 45th St, and or construction on Calumet from the time we bought it. While we understand the underpass has not been removed from possibility, we are more comfortable with some of the investment and changes in the area it is not likely to be eminent and therefore we are more comfortable with investing in the site from that perspective.

However, what we do not know is if the closure of 45th St has impacted the site to the point where it is not viable. We do know it impacted the site significantly but are unsure if it is fatal or not. The construction on Calumet occurred close enough for us not to be able to get a good feel as to true impact.
What we are asking for is the opportunity to operate the site at an acceptable level to determine if it does in fact justify making a significant investment in it. In order to do so we would ask we be allowed to open the carwash and make reasonable cosmetic improvements to the location and to operate it for a period of 24 months on a provisional basis. At or before the end of the 24-month period we will make the decision to either invest significant capital to raise the quality of the offer or work on an exit plan from the site.

A relevant part of our purchase agreement with Marathon provides that if we sell the site for a non-petroleum use Marathon has the right to require a sharing of any difference between what we paid them for the property and the selling price. This makes exiting the property before we make the determination that it is or isn't viable very difficult. In essence we would probably be better allowing the site to limp along rather than than exit but we won't know that until we try to operate with 45th St closed, Calumet open, and pushing to maximize site potential including the carwash. . It is quite possible with 45th closed we may find exiting is the right avenue for us, we just don't know that at this time.

Our options are to just continue as investing the minimum required to stay open and in compliance or make modest improvements including opening the carwash in an effort to determine if the site can be viable. If we determine it is not viable after trying it with the full facility and long term infrastructure completed the logical next step is to exit. If we determine it can be viable, we are willing to commit the capital to bring the site up to our standards, one that Munster will find acceptable, and to the level you feel reflects well on the community.

Petition BZA 21 - 007
Date: _____
Application Fee: $_____
Sign Fee: $_____

Town of Munster Board of Zoning Appeals Petition Application

OWNER INFORMATION:

GOOD OIL COMPANY INC
Name of Owner

574-946-4863
Phone Number

1201 N. U.S. HWY 35, WINAMAC IN 46996
Street address, City, ST, ZIP Code

dongood@goodoilcompany.com
Email address

APPLICANT OR PETITIONER INFORMATION (if different than above):

Name of Applicant/Petitioner

Phone Number

Street address, City, ST, ZIP Code

Email address

PROPERTY INFORMATION:

GOOD OIL COMPANY INC
Business or Development Name (if applicable)

9451 CALUMET AVE MUNSTER IN 46231
Address of Property or Legal Description

CD-4A
Current Zoning

APPLICATION INFORMATION:

Please select what this Application is for:

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

☐ **Conditional Use**

☐ **Administrative Appeal**

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

Name of Registered Engineer, Architect or Land Surveyor

Phone Number

Street address, City, ST, ZIP Code

Email address

Use Variance Conditions of Approval

Brief description of project and list of variances or conditional uses being requested:

The property is a Marathon gas/convenience store. An existing standalone car wash sits on the property. Currently, the building sits 18'2" from the principal building instead of the 20' requirement. Currently, the property is unsightly and was improperly used as a repair/maintenance bay. Good Oil and the new Lessee will work together to return the building into the car wash and upgrade the outside area. Good Oil is asking the BZA to consider a variance for the setback.

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 building is located in the originally constructed area. There have been no modifications to the structure itself therefore causing no injuries to the public health, safety, morals, and general welfare of the community.

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:

There are no outside structural changes to the building that will affect the use and value of the adjacent property.

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

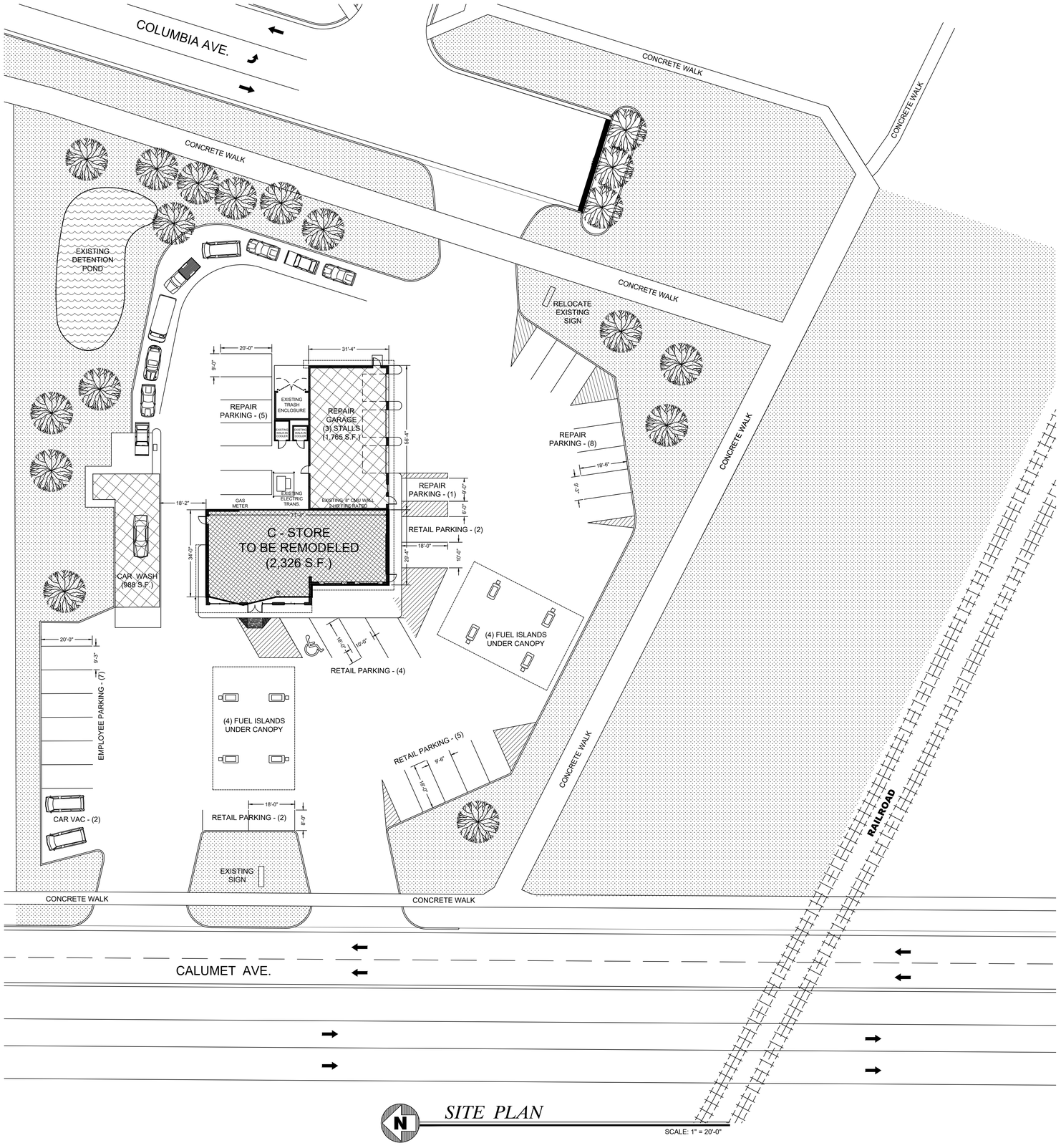
The car wash is an accessory building and does not comply with the proper 20' frontage setback from the principal building per the Town of Munster's zoning. The setback is 18'2". The building was converted from the car wash to a repair/maintenance bay. The current owner and new Lessee would like to return the structure to it's original use as a car wash.

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:

The owner and new Lessee will have the cost to restore the building to its original use. The cost to relocate the building will be too detrimental to the owner.

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

Both the principal building and accessory building are in the original location since construction.



PARKING CALCULATIONS

SERVICE STATION = 5 SPACES / 1000 S.F. BUILDING AREA

= 1/200 x 1,765 S.F. = 9 SPACES REQUIRED
14 REPAIR PARKING SPACES PROVIDED

RETAIL = 4.5 SPACES / 1000 S.F. BUILDING AREA

= 4.5/1000 x 2,326 = 10 SPACES REQUIRED
13 RETAIL PARKING SPACES PROVIDED

ADDITIONALLY

7 EMPLOYEE PARKING HAVE BEEN PROVIDED

TOTAL NUMBER OF PARKING SPACES PROVIDED

= 34 SPACES

REQUIRED HANDICAPPED PARKING = 1 SPACE AS PROVIDED

AUTO CAR WASH = EXISTS UNCHANGED

811
Know what's **below.**
Call before you dig.

revisions

date	scale	drawn by	checked by
06/28/21	AS SHOWN	R.J.E.	H.L.M.

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Harry L. Mohler

MOHLER ARCHITECTS
A Professional Corporation
Architects - Engineers - Interior Designers
U.S. Postal Address: P.O. Box 86, Lafayette, Indiana 47902
Shipping Address: 6130 Sawyer Road, Suite 6-C, Lafayette, Indiana 47905
Phone: (765) 474-2673 Fax: (765) 474-2675
Email: hlm@hlmohler.com Web Site: www.hlmohler.com

project no. 32-081

REMODEL OF C-STORE
GOOD OIL COMPANY
9451 CALUMET AVE.
MUNSTER, INDIANA 46321

SITE PLAN

HAMSTRA BUILDERS, INC.
CONTRACTORS & DEVELOPERS
12028 NORTH, 200 WEST - WHEATFIELD, INDIANA 46392
PHONE: (219) 956 - 3111 - FAX: (219) 956 - 3570
WEB SITE: http://www.hamstragroup.com

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