MUNSTER BOARD OF ZONING APPEALS
MINUTES OF REGULAR BUSINESS MEETING
Meeting Date: June 8, 2021

The announced meeting location was Munster Town Hall. In accordance with the Governor's Executive Orders 20-09 and subsequent orders related to the COVID-19 pandemic placing restrictions on the number of people allowed to gather in one location, some members attended the meeting remotely via Zoom, a video conferencing application.

Call to Order: 6:47 pm

Pledge of Allegiance

Members in Attendance:
Daniel Buksa
Stuart Friedman (via Zoom)
Sharon Mayer (via Zoom)
Jonathan Petersen (via Zoom)
Roland Raffin
Lee Ann Mellon (Town Council Liaison)

Members Absent:

Staff Present:
Tom Vander Woude, Planning Director
Dave Wickland, Attorney

Approval of Minutes:

Motion: Mr. Buksa moved to approve the minutes of the June 8, 2021 meeting.
Second: Mr. Raffin.
Vote: Yes – 5 No – 0 Abstain – 0. Motion carries.

Preliminary Hearings

a. **BZA 21-002 Guy Costanza/GM Contracting representing Vincent Cryns requesting approval of multiple variances for a proposed commercial development at 407-411 Ridge Road.**

Mr. Vander Woude reported that the applicant is requesting a public hearing for the application. He said the applicant is requesting multiple variances. He said the project has received variances in May of 2020 to reduce the required off-street parking to 31 spaces, from the minimum front setback, and the minimum front planting strip. The project was not approved by the Plan Commission and it was withdrawn in July 2020. A few months later the project was resubmitted, with a new set of required variances: from the side setback – the maximum is 24 feet, applicant is proposing a 77 foot setback – from the frontage buildout - the minimum is 80%, applicant is proposing approximately 39% - the location of the entrance – the requirement is that it be on the front of the building, applicant is proposing it to be on the side of the building – location of off street parking – the requirement is the 3rd lot layer, applicant is proposing parking in the 2nd lot layer – and the location of the required street screen – the requirement is that it be coplanar to the façade, applicant is proposing that it would located at the sidewalk.

Mr. John Reed stated that he represents the project applicant. He said the project has been delayed. He said the proposed tenants for the building are Little Italy to-go with no seating and a Domino's delivery/carryout. He said the prior variance granted for parking will limit them to 77 seating position

and they are proposing around 8. He said he would like to meet the criteria for the variance and receive development approval. He said they are requesting a public hearing at the next meeting.

Mr. Raffin asked whether parking in the 2nd lot layer could cause a safety issue with cars backing out and pulling in the same area. Mr. Reed said that he would revise the plan to push back those spots into the 3rd lot layer so they don't intrude on ingress and egress. Ms. Mayer asked if there would be less parking spaces then. Mr. Reed said that is the only option. He said they don't need the additional spaces because they are proposing carryout. Ms. Mayer asked if the building position would remain. Mr. Reed said that it would. Mr. Raffin said that he does not want to see a detention pond on this lot and said that they should install underground detention. Mr. Reed said that the building is only 2500 square feet, and the hardscape hasn't changed that much so there is not that much detention. He said they can only spend so much money on a building is only 2500 square feet. Mr. Raffin said he would not support a pond on Ridge Road. Mr. Reed said it would not be visible from Ridge Road since it's located on the northwest corner of the property. Mr. Reed said it will be visible from the train passengers. Mr. Don Torrenga said the landscaping plan is showing that there will be landscaping around the detention pond which grow up around the pond so it will not be visible from the train. He said it will be a grassed area that will be no more than 2.5 to 3 feet deep. He said the entire area is all sand so it should work fine. He said underground detention would add 20% to the cost of the project which doesn't seem reasonable.

Motion: Mr. Buksa moved to schedule a public hearing for BZA 21-002.
Second: Mr. Petersen
Vote: Yes – 5 No – 0 Abstain – 0. Motion carries.

b. **BZA 21-004 Good Oil Company Inc. requesting a conditional use permit to reuse an existing accessory structure as a car wash at the Marathon gas station at 9451 Calumet Avenue.**

c. **BZA 21-007 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.**

Mr. Vander Woude said that the Good Oil Company is proposing to reopen a car wash at the Marathon Station at 9451 Calumet. He said there are two actions associated with the proposal. The first is an application for a conditional use permit. He said a car wash is considered an auto oriented use, which is a conditional use in the CD-4.A district. He said that the accessory building was a car wash in the past but was converted into a wheel alignment bay and the car wash use was abandoned for over a year, which means the conditional use permit has lapsed. He said the 965 square foot accessory building is the proposed car wash. He said the second request is for a variance from the setback requirements for an accessory structure, which must be 20 feet back from the façade of the principal building. He said that a conditional use is permitted under certain conditions which are listed in the staff report. He said the BZA must hold a public hearing, decide whether the conditions have been met, and make a recommendation to the Town Council. Mr. Vander Woude described the site plan. He said that the site has a substantial amount of stacking space for cars and sufficient access to the site. He said they are not proposing any other improvements to the site.

Mr. Justin Schramm introduced himself as the corporate attorney for the Good Oil Company and Chuck Ryan the Chief Operating Officer. He said that they had presented this application to the Town's Site Plan Review Committee and discussed the basics of the site. He said the setback is approximately 22

inches short of the required setback. He said they recognize that Calumet Avenue has been improved and wants to be partners with the Town to ensure that the site is cosmetically pleasing. He said that he understands that some fencing needs to be installed, the signage on the building needs to be changed. He said that he has verified that the oil separator is functional and up to code. He said they would like to return the car wash to its use as a car wash. He said in the past there has been some unsightly use of the property. Mr. Petersen asked if the rendering was up to date. Mr. Vander Woude said that the site plan was submitted to the Town in connection with this application but was originally approved by the Town some years ago as part of an overall development plan. Mr. Petersen said that without an accurate rendering, the board would not be able to act on the request. Mr. Schramm said that the building and the pertinent part of the site was still in place but can understand how an accurate rendering of the 45th Street access would help their analysis. Mr. Ryan said that he didn't think the application was affected by the 45th Street closure but they can submit an accurate rendering. He said they are trying to understand if the business will be feasible, and the car wash is integral to that. Mr. Friedman asked if the intention was to operate the car wash and sell gas. Mr. Ryan said it was. Mr. Petersen asked if they are planning to tear down the facility and rebuild. Mr. Petersen asked if that is what they are planning, they should submit an accurate rendering of their final plans. Mr. Ryan said they are in a contractual agreement with a lessee that has four years on the contract. He said they need to figure out if the lessee can survive there with or without a car wash. Mr. Petersen asked why the lessee is not submitting the application. He said that the lessee has rights to possession, and they will be responsible for constructing and maintaining the car wash, so they should be at the hearing. Mr. Schramm said that privity is with the site owner; he said the code contemplates the owner making the application. He said they can ask the lessee to participate in the process but does not believe that it would be legally required. Mr. Petersen said that the owner is making representations on behalf of the site operator, and they are involved in the process. He asked whether the applicant is making the request to gauge whether this site will meet their long-term objectives and the site operator has no intention to operate the car wash. He asked whether the applicant is willing to make commitments on behalf of the tenant. Mr. Ryan said they are. Mr. Friedman suggested the applicant provide an affidavit from the tenant stating they are authorized to speak on behalf of the tenant. Mr. Wickland suggested that they provide a copy of the lease. Mr. Schramm said he would need to seek authorization from the executive committee of Good Oil to provide that. Mr. Schramm said that there is a provision in their lease that states that the owner would seek approval for the car wash. Ms. Mayer asked how long the tenant has been operating the station. Mr. Ryan said that the site has been operational since February. Mr. Ryan said that since they signed the lease, Good Oil has done everything that has been asked of them. He said they can step in and maintain property. Ms. Mayer asked whether the lease was contingent upon the opening of the car wash. Mr. Ryan said it was not. Ms. Mayer said that they can manage without an updated rendering. She said that the abandoned curb cut on 45th should be removed and landscaped. Mr. Raffin said that he sat on the board in 2013 when they updated the site. He said that the site has been an eyesore on Calumet Avenue with weeds, dead landscaping, and other issues. He said that he would like to see a commitment that the property would be maintained. Mr. Schramm suggested that the board could approve a one- or two-year grant of the conditional use to make sure the property is maintained. He said they are interested in doing better in maintaining the site. Mr. Raffin asked whether they would consider taking down the accessory structure if the conditional use is not extended. Mr. Schramm said he can take that back to the executive committee. Mr. Ryan said they are willing to improve the property. Mr. Vander Woude said that the Town staff had prevented the gas station from reopening until certain property maintenance issues had been resolved and the company had followed through. Mr. Friedman asked whether they are permitted to place a time frame on the conditional use. Mr.

Wickland said they can require commitments, but he would have to look at the law to determine whether a time frame is a legal commitment.

Motion: Mr. Buksa moved to schedule public hearings for BZA 21-004 and 21-007 contingent upon an affidavit of representation or the presence of the lessees at the public hearing, a copy of the lease, and an updated rendering.
Second: Mr. Petersen
Vote: Yes – 5 No – 0 Abstain – 0. Motion carries.

d. **BZA 21-005 Parth Patel requesting approval of a conditional use permit for a drive through at a proposed Smoothie King at 8130-8138 Calumet Avenue.**
e. **BZA 21-006 Parth Patel requesting variances from the minimum parking ratio and the maximum number of curb cuts to develop a Smoothie King at 8130-8138 Calumet Avenue.**
f. **BZA 21-008 Parth Patel requesting approval of a conditional use permit for an outdoor dining patio at a proposed Smoothie King at 8130-8138 Calumet Avenue.**

Mr. Vander Woude said that there are three actions requested in connection with the development of 8130-8138 Calumet Ave. He said that the proposal is to consolidate two lots and construct a Smoothie King with a drive through and parking lot. He said the applicant is requesting a conditional use for a drive through, a conditional use for outdoor dining, and variances from the minimum parking requirement and the maximum number of curb cuts. He said that there are currently two vacant buildings on the subject properties. He said both properties are owned by Bruce Boyer. The applicant is the developer Parth Patel. He said there is a proposed exit to the south along a town-owned alley way to 30th street. He said there is also an easement along the south edge of the property: ten feet on the subject property and ten feet on the property to the south for a shared driveway. He said the variance is being requested for two curb cuts, where only one is permitted and they are requesting a variance for 13 spaces and 24 are required. He said the applicant has provided additional information from other stores which provides evidence that fewer parking spaces are needed because most customers will be using the drive through. Mr. Vander Woude said that there is another request for an outdoor dining special use for a patio in the front of the building which will have some seating but will not have any service. Mr. Vander Woude said each petition will require a public hearing.

Mr. Patel said the southern curb cut is usually only used as an exit to Calumet which is how they are proposing for it to be used. He said they will not use the exit along the alley to the south. He said that the code required parking based on interior square footage of 1375 so they only need 23 and they are proposing 14 total stalls including the ADA space. He said they are adding the patio to meet the frontage requirement and he said they tried to reorient the building to keep cars and pedestrians separate. He said the main reason for the conditional use for the drive through is that drive throughs typically generate 20% more sales, and they are estimating their cost to be $1.8 million so to meet that debt service they would need additional volume from the drive through.

Mr. Raffin said that he has big concerns about having a drive through. He worries about stacking on Calumet Avenue during busy times. He said that the Dairy Queen drive through routinely backs up onto Ridge Road during busy times. He said that he also doesn't want to see additional curb cuts that limit pedestrian access and cause traffic hazards on Calumet Avenue. He said the restaurants across the street are successful without a drive through. Mr. Patel said that they are adding a second menu board to service guests more quickly and prevent back up stacking on to Calumet Avenue. He said that they are

leaving a 30-foot clearance to allow for maneuvering in and out of parking spaces even if the drive through is backed up. Mr. Patel said that his drive through concept is different from the Dairy Queen. Mr. Raffin asked how many of his restaurants have drive throughs. Mr. Patel said he has seven Smoothie Kings, and none have drive throughs. He said that he knows a franchisee in Yorkville that just constructed a drive through, and he is using his assumptions and that restaurant is number three in sales. Ms. Mayer said that the drive through could work on a corner, but she cannot support it in this location. Mr. Friedman said that he is sympathetic to the need to make a profit, but they have had difficult experiences with a Dunkin Donuts drive through in a tight location on Calumet.

Motion: Mr. Raffin moved to schedule public hearings for BZA 21-005, 21-006, and 21-008.
Second: Mr. Petersen
Vote: Yes – 5 No – 0 Abstain – 0. Motion carries.

Public Hearings

a. **BZA 20-012.Superior Ave.475. BCORE Corridor Chicago LLC represented by Kimley-Horn requesting approval of developmental standards variances from Table 26-6.405.A-7 of the Munster zoning ordinance to expand a driveway beyond the maximum permitted width, to permit off-street parking in the first lot layer, to permit off-street loading in the first lot layer, and to waive the required screening for loading areas and from Table 26-6.405.O-3 to waive the minimum dimensions for a parking area.**

Mr. Vander Woude stated that the petitioner had a scheduling conflict and is unable to attend the meeting but plans to appear at the July meeting and therefore have requested a continuance. Mr. Raffin said that he would hope they could get the project done this year if approved. Ms. Mayer asked if truck traffic has been reduced. Mr. Vander Woude said he hasn't seen the numbers, but anecdotally it appears that their changes have had a positive effect. Ms. Mayer asked whether they can require them to implement the project within 60 days. Mr. Vander Woude said that the zoning code gives applicants a year to implement a project. Ms. Mayer suggested that we encourage them to complete the project prior to the holidays.

Motion: Mr. Buksa moved to table BZA 20-012 to the July meeting contingent on this being the last continuance granted.
Second: Ms. Mayer.
Discussion: None.
Vote: Yes – 5 No – 0 Abstain – 0. Motion carries.

Findings of Fact

a. **BZA 21-001 ICU Sign Solutions, LLC on behalf of Mark C and Elizabeth A Demakas H&W, requesting approval of variances from TABLE 26-6.701.B MONUMENT SIGN SPECIFIC STANDARDS and SECTION 26-6.701.B.5.t to permit a cabinet-type monument sign that is greater than 18 square feet.**

Motion: Mr. Buksa moved to approve the findings of fact for BZA 21-001.
Second: Mr. Petersen.

Vote: Yes – 5 No – 0 Abstain – 0. Motion carries.

Additional Business/Items for Discussion

Mr. Vander Woude reported that the Governor's order declaring a public health emergency was extended to the end of June, but he anticipates that the Governor will let it expire soon. He said he expects the Town Council to adopt a policy for virtual meetings that will be in accordance with state law. He said he will provide that information to the members.

Next Meeting: Mr. Freidman announced that the next regular business meeting will be July 13, 2021, at 6:45 p.m.

Adjournment:

Motion: Mr. Petersen moved to adjourn.
Second: Mr. Raffin.
Vote: Yes – 5 No – 0 Abstain – 0. Motion carries.

Meeting adjourned at 8:06 p.m.

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Chairman Stuart Friedman
Board of Zoning Appeals

Date of Approval

_____ _____

Executive Secretary Thomas Vander Woude
Board of Zoning Appeals

Date of Approval