

MUNSTER BOARD OF ZONING APPEALS
MINUTES OF REGULAR BUSINESS MEETING
Meeting Date: July 13, 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: 6:45 pm

Pledge of Allegiance

Members in Attendance:

Daniel Buksa
Stuart Friedman (via Zoom)
Sharon Mayer (via Zoom)
Jonathan Petersen
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. Petersen.

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

Preliminary Hearings

- a. None.

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 petition had been tabled multiple times to allow the applicant to gather additional data as requested by the board, which they are ready to present. Mr. Jonathan Gocke of GE Appliances via zoom presented data that shows the truck traffic entering their Munster facility. He said that there has not been a significant increase or decrease in truck traffic over the last 17 months. He said in 2020 the average ins and outs were 915 per week and so far in 2021 it has been 926. He said that they have not had issues over the last few months: the Lansing lot has been a success; they store 60 trailers there. They have a one-year lease beginning in February 2021 and they plan on exercising an

option to extend it a year, and beyond. Mr. Raffin asked whether the parts shortage caused by the pandemic has reduced their traffic and whether they see it increasing in the future. Mr. Gocke said their volume has remained steady over the pandemic, so he doesn't anticipate major increases. Ms. Mayer asked why the chart showed Christmas and Thanksgiving as being low traffic times. Mr. Gocke said that's because the data is shown by week and those are short weeks.

Mr. Gocke showed a chart that listed the width of the entrances for all their distribution centers across the country. He said the average is 56 feet and the Munster lot entrance is 23.6 feet wide. He said their proposal is 60 feet which will bring it up to the average.

Motion: Mr. Petersen moved to approve the variance requests for BZA 20-012 as presented.

Second: Mr. Buksa.

Discussion: Mr. Raffin asked Mr. Wickland if they approve the variances and the problem of truck congestion continues can they hold GE responsible. Mr. Wickland said that he would have to look into it, but he believed there are options available to us. Mr. Petersen amended his motion to make approval subject to approval of the development plan submitted under PC Docket 20-008. Mr. Buksa agreed to the amendment. Ms. Mayer asked whether they could require the applicant to continue to have an off-site lot in Lansing. Mr. Wickland said that reasonable conditions can be attached to the variance. Mr. Vander Woude said that his opinion is that that condition would be too specific. He said they may be able to address the issues in other ways and he wouldn't recommend tying it to a specific solution. Mr. Buksa asked if they should use the term "alternative off-site storage". Mr. Vander Woude said that he would rather address the issues rather than the means that they use. He said if it continues to be a problem, they would have to use other tools to address the problem. Ms. Mayer said they would want to require that the truck traffic not increase. Mr. Vander Woude suggested that the variance be tied to the problem of trucks stacking in the streets of the business park rather than the volume of trucks in and out of the facility. Mr. Petersen suggested that the Plan Commission could address this as part of the development plan.

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

b. 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 presented his staff report. He said that the applicant is proposing a 2500 square foot building at the lots at 407-411 Ridge Road. He said they have received a conditional preliminary plat approval and three variances. He said they are now requesting four additional variances from the side setback maximum of 24' to permit a side setback of 77'; from the frontage buildout minimum of 80% to permit a frontage buildout of approximately 39%; from the requirement that the entrance be located on the front façade to permit the main entrance on the side façade; and from the minimum parking of 31 spaces, which was approved by variance, to permit only 30 spaces. He said that plans have been revised so that the previously included requests to permit off street parking in the 2nd lot layer and for the street screen to be in line with the parking lot rather than coplanar to the façade have been withdrawn.

He said that the plans no longer show a detention pond and instead show detention in a vault under the parking lot.

Mr. John Reed introduced himself as the representative of the applicant. He said that they now have tenants for the building. Mr. Reed said that the site and building are not very large, it will appear to be a two-story building, and the details of the building and site will be reviewed by the Plan Commission.

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

Mr. Petersen asked who the tenants will be. Mr. Reed said that there will be two tenants: a Domino's delivery and pick up and Little Italy to-go with no seating. He said that he thinks both will be used by train passengers. He said one of the previous variances limited the seating, but there will be no seating in the businesses. Mr. Buksa asked how this would interface with the Town's streetscaping plan. Mr. Vander Woude said that the streetscaping takes place within the public right-of-way and so is not affected. He said the plan assumes that there will be one curb cut per lot, which is the case with this plan. Mr. Petersen asked whether staff was recommending tabling because the application was incomplete. Mr. Vander Woude said that for the purpose of the variance request the application is complete.

Mr. Raffin said that he expects the building aesthetics to be high quality and include interesting architectural features.

Motion: Mr. Raffin moved to approve the variances requested in petition BZA 21-002.

Second: Ms. Mayer.

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

- c. **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.**
- d. **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 read his staff report for the record. He 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 related to the proposal. The first is an application for a conditional use permit to reopen the 965 square foot accessory car wash building, which is located to the north of the convenience store. He said that it was a car wash in the past but was converted into a mechanics bay and the car wash use was discontinued for over a year, which means the conditional use permit has lapsed. 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 front façade of the principal building. He said the convenience store is the principal building. He said that there are different standards for a conditional use and a variance. He said a conditional use is permitted if the conditions are met, which is a lower bar than a variance, which requires the showing of a hardship or practical difficulty. He said that the applicant has provided a current site plan, a copy of the lease between Good Oil and the operator, and a power of attorney which permits Good Oil to speak on behalf of the operator and make commitments as requested by the board. He said both agenda items require a public hearing.

Mr. Justin Schramm introduced himself as the corporate attorney for the Good Oil Company and Chuck Ryan the Chief Operating Officer. He thanked the board and staff for their time. He said that the board had discussed various concerns about the property. He said that they have set standards in their lease agreement that requires the operator to keep the property up to Town standards and Good Oil standards.

Mr. Petersen asked the applicant to describe the policies and procedures that they have put in place to ensure compliance with the standards. Mr. Chuck Ryan said that their plan is to open the car wash. They intend to operate with a tenant and they are hoping to ascertain whether the site with the closure of 45th Street will be successful. He said that they have potential to draw northbound traffic. He said that he understands that in the past the site has not been run in the way Good Oil normally runs a site. He said the 45th Street underpass project paused their investment in the site. He said that if the site is successful, they plan to upgrade the site to the standards of their other sites around Indiana. He said when they run a site, they do so in a first quartile way. Mr. Schramm said that the lease agreement outlines general expectations for the site. He said that he sent a certified letter to the tenant expressing the tenant's obligations to maintain the site. He said they don't want to reflect poorly on them by being an eyesore. He said he understands the investment that the Town has made in the area and they don't want to be an eyesore. They think that leaving the car wash vacant does not benefit them or the Town. He said that it is to the benefit of both parties to clean up the site and use it to their optimum value. Mr. Friedman asked whether the upgrading of the site is the responsibility of the owner or the tenant and whether or not they plan to upgrade the site regardless of whether the car wash is open. Mr. Schramm said that they have to determine whether a significant investment in the site is feasible. Mr. Ryan said the site will operate at an optimal level as it is today and Good Oil has the ability to pay for that. He said they believe that the site will do well with the car wash operating, but they don't know because it has in the past not been run well or been open consistently. He said if they are correct they would upgrade the site with a 1 to 1.5 million dollar upgrade including EV charging stations. He said there is a plan to upgrade the site if it proves to be viable.

Mr. Petersen said this site is at the epicenter of development in the Town and what he is hearing from the petitioner is that they intend to milk the site until some undefined time in the future and run it like it has been run in the past. He said it has been run like a dump. He said he will not vote to approve it unless he hears something more concrete. He said he has been on the board for some time and knows what a petitioner that has his act together should sound like. He said they have traffic studies, projected volume of business, and they tell us what they're investing in this location because they know the traffic will support it. He said he has also seen petitioners like this who make promises and do not follow through on them. He said he doesn't think the petition has met the burden and will be voting against it.

Mr. Friedman opened the public hearing for BZA 21-004. Mr. Schramm said that he appreciates the comments from the board and suggested that the conditional use be limited to a specific timeframe of 18 or 24 months to allow them to prove themselves. Mr. Friedman closed the public hearing. Mr. Friedman asked Mr. Wickland if they can limit the permit to a specific length of time. Mr. Wickland said reasonable conditions can be placed on the approval. Mr. Raffin asked if the vacated service bays will be reused. Mr. Ryan said that they may expand the convenience store into that space. Mr. Raffin asked if the pumps will be upgraded. Mr. Ryan said that they have already upgraded the pumps and painted and remodeled the building. Mr. Ryan said that the site needs to be upgraded, but they don't know given the closure of 45th whether the site is still viable. He said that Don Good has offered to work with the Town if they sell the property to determine the buyer. Ms. Mayer asked if they were concerned that the site is not on a corner. Mr. Ryan said that the change in traffic flow is a concern; they rely on the northbound traffic on Calumet only. Ms. Meyer asked who would enforce a timeline on the motion. Mr. Vander Woude said the zoning enforcement officer would be responsible. Mr. Petersen said that this is not the type of business that is looking to invest in Munster but is looking to extract value from the Town. He said that the petitioner is going to see what happens, and wait to see if the property value increases, but

not invest in the site. Mr. Ryan said he's only asking to reopen the car wash not for permission to rebuild the facility. Mr. Schramm said that they are already operating the gas station and don't need permission for that, and they would like to reuse a vacant building as a car wash. He said that he doesn't know what harm a car wash does in that location. He said the building will be there whether or not they reuse it. He said that the best use of the building is a car wash and it will be more of a detriment if it sits there empty.

Ms. Mellon said that the curb cuts currently go both ways. She said that given the construction going on she doesn't think that can continue and thinks that could cause a problem. She suggested that the driveways be a right-in/right-out. Mr. Vander Woude said that they have not required them to do that, but if that's something that the board would like to require as a condition, they could do that. He said that sometimes gas stations have difficulty modifying their curb cuts because they need to accommodate their fuel trucks. Mr. Ryan said that modifying the curb cut would have to go before their executive board.

Motion: Mr. Buksa moved to send a favorable recommendation to the Town Council to approve the conditional use for a car wash at 9451 Calumet Avenue under BZA 21-004 contingent upon the following:

1. The car wash is to be located in the existing accessory building.
2. The car wash is to be an accessory use to the existing Marathon gas station.
3. The car wash queuing area is to be screened by a 3'-3.5' Wall or Enhanced Hedge in accordance with Munster zoning ordinance TABLE 26-6.405.A-6 DISTRICT STANDARDS Screens.
4. The Board of Zoning Appeals approves a variance from the setback standards of TABLE 26-6.405.A6
5. The permit be granted with a time limit of 12 months.

Second: Mr. Raffin seconded and requested an amendment to the motion stating that if the conditional use permit is not renewed after a year and they don't have a plan, the accessory building be vacated and taken down and restored to landscaping or parking. Mr. Buksa accepted the amendment.

Vote: Yes – 4 No – 1 Abstain – 0. Motion carries.

Mr. Friedman opened the public hearing for BZA 21-007. No comments. Mr. Friedman closed the public hearing.

Motion: Mr. Raffin moved to approve the variance from the minimum setback for an accessory structure at 9451 Calumet Avenue BZA 21-004 contingent upon the following:

1. The car wash is to be located in the existing accessory building.
2. The car wash is to be an accessory use to the existing Marathon gas station.
3. The car wash queuing area is to be screened by a 3'-3.5' Wall or Enhanced Hedge in accordance with Munster zoning ordinance TABLE 26-6.405.A-6 DISTRICT STANDARDS Screens.
4. The Munster Town Council approves a conditional use permit for a car wash at 9451 Calumet
5. Avenue.

Second: Mr. Buksa

Vote: Yes – 4 No – 1 Abstain – 0. Motion carries.

- e. **BZA 21-006 Parth Patel requesting variances from the minimum parking ratio to develop a Smoothie King at 8130-8138 Calumet Avenue.**

Mr. Vander Woude presented his staff report. He said that the petition presented last month required additional variances and conditional uses for a drive through and for an outdoor dining area. He said that the applicant has revised the plans eliminating the drive through and the outdoor dining area and has withdrawn those applications. He said that the application is for a three-unit commercial building at 8130-8138 Calumet Avenue. He said there is now a request for a single variance; from the minimum parking requirement. The applicant is proposing 27 parking spaces. The number of spaces is sufficient for office or retail uses, but they require a variance to have multiple restaurants, including the proposed Smoothie King which requires 18 spaces. He said the staff recommendation is to permit restaurant uses, but to cap the number of seats at 67, which equals 1 space for every 2.5 seats. He said there is a single curb cut at the south edge of the property using a shared driveway easement. He said the plan provides connectivity to adjacent properties. Mr. Parth Patel said that he revised the site plan based on the feedback from the board. He said he's asking for permission to include additional restaurant uses, with the seats capped at 67. Ms. Mayer asked if the change from one tenant to three tenants, changes their proforma. Mr. Patel said that they are adding two tenant spaces to make up for the lost revenue from not having a drive through. He said they also need to make the building larger to meet frontage buildout requirements. Ms. Mayer asked if he knew the future tenants. Mr. Patel said he did not. Mr. Raffin asked if there are façade differentiation requirements for this building. Mr. Vander Woude said that they have not seen the architectural plans for the building yet. He said that the standard for façade differentiation applies only to buildings that are 100 feet in width. Mr. Patel said that the façade could be differentiated by materials or architecture; he said the doors will be recessed. Mr. Vander Woude said that the Plan Commission will have to approve the development plan and subdivision. Mr. Raffin said that the cars entering and exiting on Calumet could be a problem because the parking is so close to the sidewalk and Calumet Avenue. Ms. Mayer asked how many spaces are required for the design and how many they are providing. Mr. Vander Woude said that they are providing 27 spaces and the number of spaces required depends on the use; restaurant require more spaces than retail, office or personal services. The variance would allow them to have, in addition to the Smoothie King, two retail uses or a restaurant use. Mr. Vander Woude said he needs 18 for the Smoothie King and 21 for each additional restaurant. Mr. Vander Woude said he is recommending granting the variance but limiting the number of seats for all restaurants to 67 seats.

Mr. Friedman opened the public hearing. Mr. Jose Ocegueda of 8130 Jefferson asked what good this project will bring to the Town and to property owners. He said he's also concerned about a drive through speaker. Mr. Friedman said that they hope that all businesses will improve the Town and they evaluate all aspects of each project. Mr. Patel said that they are not including a drive through so there will be no speaker, there will be a 10 foot alley separating the building from the property to the west, and there are currently two vacant buildings on the lots which do nothing for property values. Mr. Tony Gagliardi owner of 8124 Calumet Avenue said that he is concerned that Calumet Avenue is congested and he is concerned that the customers of the proposed building will park on his property which will affect his tenants. He said that turning left out of the driveway will be difficult because Calumet Avenue backs up. Mr. Vander Woude said he has a written letter from the attorney of Mr. Gagliardi objecting to the variance and read it into the record. Mr. Patel said that the tenants of Mr. Gagliardi are already parking on the subject property so he may not have adequate spaces on his lot. He said that Mr. Gagliardi's property is closer to Broadmoor than the subject property so if his customers don't have issues turning onto Calumet, he shouldn't have issues on his property. He said his curb cut will also support customers of Mr. Baker's property to the south. Mr. Raffin said that three food type businesses will cause traffic problems and the traffic on Calumet is completely different from Ridge Road. He said

that they want it to be safe. Mr. Patel said that he's trying to have uses similar to those across the street. Mr. Raffin said that the parking is problematic across the street. Mr. Buksa said he shares Mr. Raffin's concerns about traffic. Mr. Friedman closed the public hearing.

Motion: Ms. Mayer moved to deny the petition.

Second: Mr. Buksa.

Discussion: Mr. Petersen suggested that Mr. Patel withdraw the petition rather than be denied. Mr. Patel asked to withdraw. Mr. Vander Woude suggested that the applicant request to be tabled rather than withdraw. Ms. Mayer withdrew her motion.

Motion: Mr. Petersen moved to table the petition.

Second: Mr. Buksa.

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

Findings of Fact

- a. None.

Additional Business/Items for Discussion

Mr. Vander Woude said that they received an application for a sign variance at the Citgo Station at 1750 45th St. He said the submittal met the deadline but staff neglected to place it on the agenda. He asked whether the board would consider granting a public hearing for the application in August.

Motion: Mr. Petersen moved to table the petition.

Second: Ms. Mayer.

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

Next Meeting: Mr. Friedman announced that the next regular business meeting will be August 10, 2021, at 6:45 p.m.

Adjournment:

Motion: Mr. Raffin moved to adjourn.

Second: Mr. Petersen.

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

Meeting adjourned at 8:47 p.m.

Chairman Stuart Friedman
Board of Zoning Appeals

Date of Approval

Executive Secretary Thomas Vander Woude
Board of Zoning Appeals

Date of Approval