



# BOARD OF ZONING APPEALS STAFF REPORT

**To:** Members of the Board of Zoning Appeals

**From:** Sergio Mendoza, Planning Director

**Meeting Date:** January 9, 2024

**Agenda Item:** BZA 23-012

**Application Type:** Developmental Standards Variance

**Hearing Type:** Public Hearing

**Summary:** Dave DeRolf is requesting a variance approval from TABLE 26-6.405 A-3 *Private Landscaping and Fencing, Corner Lots, 3.* to reinstall an existing fence 14' 11" south, from the home at 8649 Greenwood Avenue.

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**Applicant:** Dave DeRolf for Paul Kraszyk (property owner)

**Property Address:** 8649 Greenwood Avenue

**Current Zoning:** CD-3.R2 Neighborhood – 60' Lot One Family Residence District

**Adjacent Zoning:** North: CD-3.R2(Neighborhood - 60' Lot SFR Character District)  
South: CD-3.R1 (Neighborhood - 70' Lot SFR Character District)  
East: CD-3.R2 (Neighborhood - 60' Lot SFR Character District)  
West: CD-3.R2 (Neighborhood - 60' Lot SFR Character District)

**Action Requested:** Approval of Developmental Standards Variance

**Actions Required:** Review Conditions of Approval Questions and Open and Close Public Hearing

**Staff Recommendation:** Motion to Deny the installation of a fence 14' 11" from the home.

**Attachments:** 1. BZA Application, Exhibit A (pg. 7)  
2. Plat of Survey with proposed fence, Exhibit B (pg. 9)

**PROJECT BRIEFING**

Dave DeRolf is representing the property owner at 8649 Greenwood Avenue, Paul Kraszyk. See Image 1 below. Mr. DeRolf has submitted a fence permit to remove and reinstall an existing fence south 14 feet 11 inches from the home. The fence permit is currently on hold and is seeking a variance request from the Munster Character Based Zoning Code (MZC), TABLE 26-6.405 A-3 *Private Landscaping and Fencing, Corner Lots, 3.*; which requires a fence be setback three feet from the public right-of-way.

A fence 11 feet south from the home would be permitted without variance approval. The Board of Zoning Appeals may consider a fence from the home to the end of the property line, which is 14 feet south from the home. However, the Board of Zoning appeals cannot grant a variance that will encroach 11 inches into the public right-of-way. Image 2 below identifies 14 feet exist from the home to the public right of way.



Image 1 Property Location.

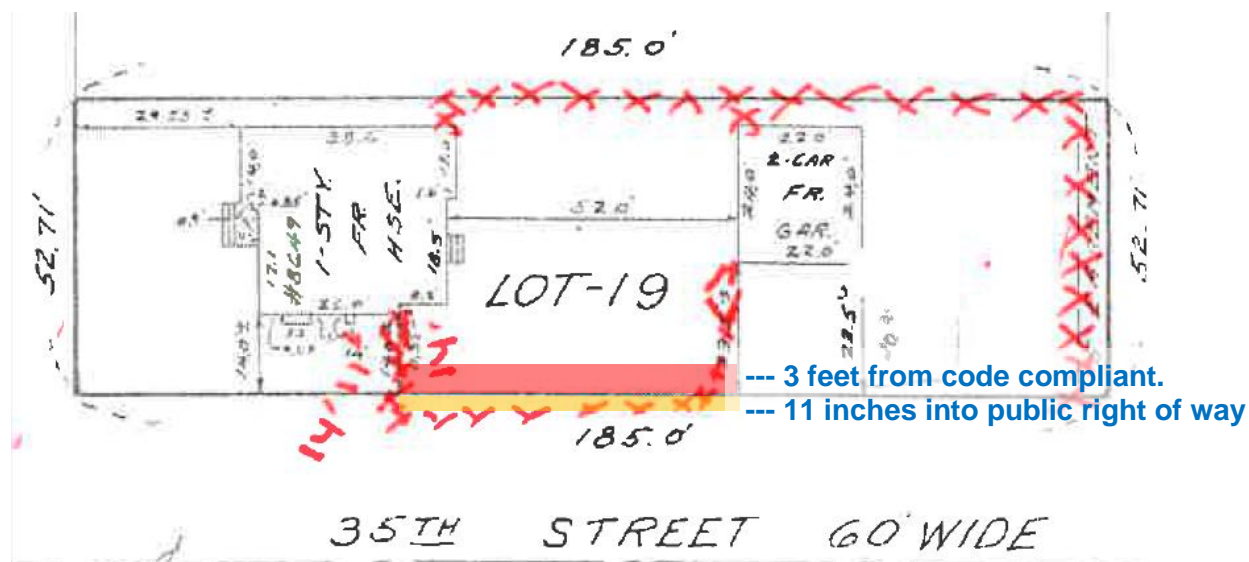


Image 2 - Property Dimensions.

### PROJECT HISTORY

The subject property currently has an existing fence extending 14' 11" from the south side of the home. The Munster Community Development Department has on record two fence permits. One fence permit was issued in 2004 and another fence permit was issued in 2018. One or both fence permits may be paper archived in storage. Staff will need to investigate archived files. A paper record may reveal if a permit was inadvertently issued to encroach 11 inches into the public right-of-way or if the fence was inadvertently installed 11 inches into the public right-of-way. Also, it has been determined that the Munster Zoning Code permitted fence installations to the property line on corner lots prior to 2019. Staff has determined that the 2004 permit no longer available for review. However, staff was able to locate the 2018 permit application and supporting documents. Within said 2018 permit document a Surveyor Location Report shows a fence installed along the property line, See Image 2.1 below.

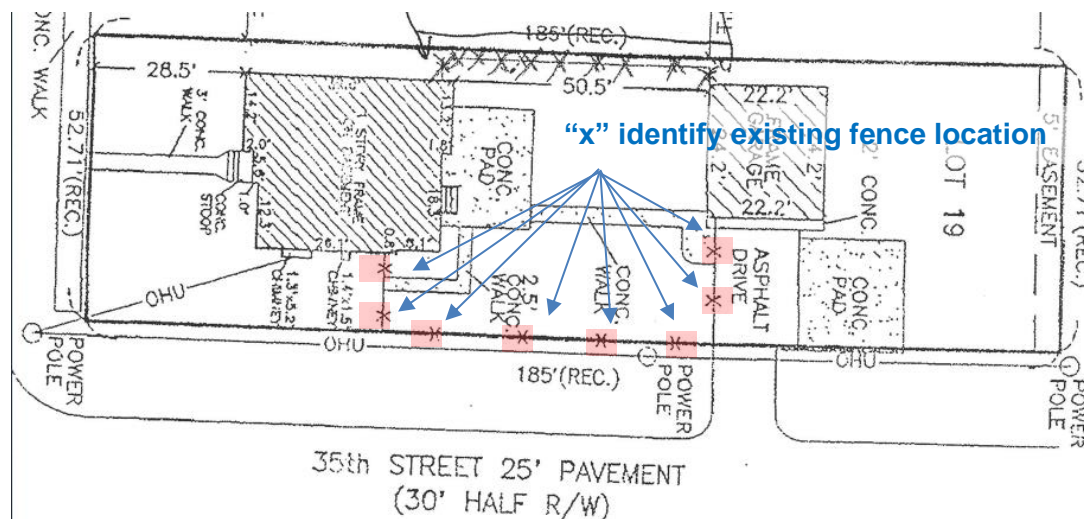


Image 2.1 - Surveyor Location Report from 2018 Fence Permit.

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*Image 3 East View of Fence.*



*Image 3 West View of Fence.*

**DISCUSSION**

The applicant should be advised that the Board of Zoning Appeals may only consider a variance within the property limits and is not authorized to grant the use or encroachment of the public right-of-way.

The Munster Character Based Zoning Code requires fences to be installed 3 feet back from the public right of way. Complying with this code would permit the property owner to install a fence 11 feet from the home and potentially bypassing the concerns expressed by the applicant or property owner regarding an existing tree within the 14' corner lot, side yard property line.

Munster's current Character Based Zoning Code reads:

**TABLE 26-6.405 A-3 PRIVATE LANDSCAPING AND FENCING, CORNER LOTS, 3.** (MZC pg. 71)  
*"A Fence must be set back a minimum of three feet from the public right of way."*

However, as identified earlier, a fence was installed in 2018 under Munster's previous Zoning Code (see below). Perhaps at the time of the fence installation the zoning officer determined that allowing a fence on the side yard of a corner lot facing the street would not hamper traffic visibility and authorized the fence to be installed 14' from the home along the property line (as shown on the Alta Survey, image 2.1).

Munster's previous Zoning Code read:

*Sec. 26-986. - R-1, R-2, R-3 and R-4 districts.*

*(c) Fences on corner lots. Fences on corner lots are subject to the following conditions:*

- (1) For purposes of this subsection, the word "front" shall apply to the building setback line on the street side of the lot of shortest dimension, irrespective of the orientation of the residence.*
- (2) Where the zoning officer determines that allowing a fence on the side yard of a corner lot facing the street would hamper traffic visibility, endanger public health or safety, or be detrimental to the aesthetic qualities or property values of neighboring properties, the zoning officer may require that the side yard facing the street shall be treated as an additional front yard, and all regulations for fences forward of the front yard setback line shall apply. The decision of the zoning officer to apply the front yard regulations to the side yard shall be appealable to the board of zoning appeals in the manner set out in section 26-455.*
- (3) A residence on a corner lot with a driveway on the long dimension street side shall not construct any fence within a regular triangular area on either side of the driveway defined as beginning at the intersection of each side of the driveway with the property line, then proceeding ten feet along the property line away from the driveway, then returning toward the driveway on the property at a 45-degree angle until intersecting the driveway or the garage and then along the edge of the driveway returning to the starting point. Any fence along the side of a corner lot to the rear of the rear plane of a house shall be constructed a minimum of three feet from the property line.*

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**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.

**The applicant has addressed the criteria for the above development standards variance within this report, see page 9.**

**STAFF FINDINGS and RECOMMENDATION**

Staff finds the application and supporting documents are in order and requests that this application hold a Public Hearing. On Monday, October 2, 2023 staff contacted Mr. DeRolf, via telephone, to confirm that the Application and Plat of Survey identifies 14 feet to the property line and that they are requesting 14 feet 11 inches. Mr. DeRolf acknowledged that the additional 11 inch ask is part of reinstalling the fence to its current location and they would like to advance the application as submitted, despite being advised that the Board of Zoning Appeals may only consider a variance within the property limits and cannot authorize use or encroachment of the public right-of-way.

From review of the 2018 permit and supporting documents, staff suspects the fence was intentionally installed 11 inches into the public right-of-way to avoid the location of an existing tree. Staff is unable to determine a hardship that is not self-imposed or identify a difficulty in complying with current code. However, understanding that the previously approved fence permit allowed a fence to be installed along the corner lot side yard lot line, staff would support the reinstallation of the fence 14 FT from the home with the fence being rerouted into the private yard bypassing an existing tree. Staff would also support compliance with the fence being reinstalled 11 FT from the home and bypassing an existing tree altogether.

**MOTION**

The Board of Zoning Appeals may consider one of the following motions:

- 1) *Motion to APPROVE the reinstallation of a corner lot side yard fence along the property line 14FT from the home, including all Discussion and Findings.*
- 2) *Motion to APPROVE the reinstallation of a corner lot side yard fence along the property line 14FT from the home, CONTINGENT upon the Fence being rerouted into the private rear yard bypassing an existing tree, including all Discussion and Findings.*
- 3) *Motion to DENY the reinstallation of a corner lot side yard fence along the property line 14FT from the home and that the fence be installed in compliance with the Town's current code, 3 Feet from the property line, including all Discussion and Findings.*

## EXHIBIT A



Petition BZA \_\_\_\_\_ - \_\_\_\_\_

Date: \_\_\_\_\_

Application Fee: \$ \_\_\_\_\_

Sign Fee: \$ \_\_\_\_\_

## Town of Munster Board of Zoning Appeals Petition Application

## OWNER INFORMATION:

Paul Kraszyk

Name of Owner

219-712-6516

Phone Number

8649 Greenwood

Street address, City, ST, ZIP Code

Paul@Krazman.com

Email address

## APPLICANT OR PETITIONER INFORMATION (if different than above):

Dave DeRols

Name of Applicant/Petitioner

219-712-6517

Phone Number

718 N. Robin Ct

Street address, City, ST, ZIP Code

Griffith To 46319

Dave@Krazman.com

Email address

## PROPERTY INFORMATION:

Business or Development Name (if applicable)

8649 Greenwood

Address of Property or Legal Description

Oak Grove Add. L. 19

CD-3-R2

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):

Want to Replace existing fence where it is Now  
Fence is 14' 11" from house to corner

Property Line is 14' (code states 3 ft off of Rte away)

we are asking to Put fence in same location which

is 3' 11" Variance Table 26-6-405 A-3

Name of Registered Engineer, Architect or Land Surveyor

Phone Number

Street address, City, ST, ZIP Code

Email address



BZA 03-012

**DEVELOPMENTAL VARIANCE CONDITIONS OF APPROVAL**

The Munster Board of Zoning Appeals is authorized to hear petitions for developmental standards variances and to approve or deny. The Board of Zoning Appeals may also impose reasonable conditions and restrictions. Indiana Code 36-7-4-918.5 lists the legal criteria for a developmental standards 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:

Install fence where it is now

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:

Area around fence will not affect anything  
Installing in same location

3. The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the property. Explain why this statement is true in this case:

Fence in same location

**Attach additional pages if necessary**



Petition BZA \_\_\_\_\_ - \_\_\_\_\_

***Town of Munster Board of Zoning Appeals Application Signature Page***

I hereby authorize Don Scholt to act on my behalf as my agent in this petition and to furnish, upon request, supplemental information in support of this petition application.

Paul G. Gough President 9/20/23  
Signature of Owner Date

[Signature] 9/20/23  
Signature of Applicant Date

**EXHIBIT B****PLAT OF SURVEY**

NAME OF OWNER Patricia Bes (L-4789)  
 STREET ADDRESS 8649 Greenwood Avenue, Munster, Indiana  
 ORDERED BY Bank One Mortgage Corp  
 DESCRIPTION OF PROPERTY Lot 19, Oak Grove Addition to Munster, as shown in  
Plat Book 21, page 14, in Lake County, Indiana.  
 Flood Zone C per Federal Map

**EXPLANATIONS**

NO DIMENSIONS SHOULD BE ASSUMED BY SCALE MEASUREMENTS UPON THE PLAT

TOP OF PLAT IS NORTH  
 SCALE 30.0 FT. = 1"  
 STATE OF INDIANA }  
 COUNTY OF LAKE } ss. CROWN POINT, INDIANA June 26, 19 91  
 FOR MORTGAGE PURPOSES ONLY

THIS IS TO CERTIFY THAT I HAVE SURVEYED THE ABOVE DESCRIBED  
 PROPERTY ACCORDING TO THE OFFICIAL RECORDS AND THAT THE  
 PLAT HEREON DRAWN CORRECTLY REPRESENTS SAID SURVEY.

*George E. McIntosh*  
 Registered Land Surveyor, No. 9428

Note—Contractors or Builders should be notified to carefully test and compare on the ground the points, measurements, etc., as noted in this certificate, with the stakes, points, etc., given on the property, before building on the same, and AT ONCE report any seeming or apparent difference between the same to the Surveyor, that misunderstanding, displacement of points, etc., may be corrected before damage is done.

FIELD BOOK NO. \_\_\_\_\_ PAGE \_\_\_\_\_



PLAT NO. \_\_\_\_\_

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