

MUNSTER BOARD OF ZONING APPEALS
MINUTES OF REGULAR BUSINESS MEETING
Meeting Date: January 9, 2024

The announced meeting location was Munster Town Hall and could be accessed remotely via Zoom, a video conference application.

Call to Order: 6:45 pm

Pledge of Allegiance

New Appointments to the Plan Commission:

Clerk/Treasurer Wendy Mis administered the oath of office to the following new members of the Plan Commission.

- Jennifer Johns
- Ed Pilawski

Members in Attendance:

Sharon Mayer
Roland Raffin
Brad Hemingway
Jennifer Johns
Ed Pilawski
Jonathan Petersen, Liaison

Members Absent:

Staff Present:

Sergio Mendoza, Planning Director
David Wickland, Attorney

Election of Officers:

a. Chairman

Motion: Ms. Mayer moved to nominate Mr. Raffin as Chairman.

Second: Mr. Hemingway

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

b. Vice Chairman

Motion: Ms. Mayer moved to nominate Mr. Hemingway as Vice Chairman.

Second: Mr. Hemingway

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

c. Executive Secretary

Motion: Mr. Raffin moved to nominate Sergio Mendoza as Executive Secretary.

Second: Ms. Mayer

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

Approval of Minutes:

a. December 12, 2023, Draft Minutes

Motion: Ms. Mayer moved to approve the December 12, 2023, minutes as presented.

Second: Mr. Hemingway

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

Preliminary Hearings: None

Public Hearings:

a. BZA23-012 Dave DeRolf is seeking a Developmental Standards Variances to allow a fence to be installed 14' 11" from the house at 8649 Greenwood Avenue.

Mr. Mendoza said the petitioner is requesting a reinstallation of an existing fence. The fence is currently identified as existing 14' 11" from the side of the home; the property is located on a corner lot. This request is to reinstall the fence 11 inches outside the property line, which is encroaching into the right-of-way. The applicant was notified that the Board of Zoning Appeals does not have the authority to grant use of the public right-of-way. That is under the authority of the Town Council. He was advised that the Board of Zoning Appeals could grant up to the property line which is 14 feet from the side of the home. The applicant understands that process. The current ordinance requires that, on a corner lot, side fences must be 3 feet from the property line, however, when the fence permit was issued in 2018, the ordinance allowed for the fence to go to the property line under conditional review of the zoning administrator, or the zoning official at the time, as long as there was no impediment to the sight lines. The request states that the petitioner encroached 11 inches into the right-of-way to incorporate a tree in the rear yard. If they were to move the fence back 11 inches to comply with the previous zoning code, they would run into that tree. The current zoning code requires that the fence be set back an additional 3 feet. He said the 2018 application included an ALTA survey which identified the position of the existing fence as being located on the property line as indicated by the red exes on the survey. It was thought that, perhaps, when the fence was installed, it had been installed outside that line because of the tree.

Staff is recommending one of the following two options.

1. Allow a variance from the current zoning code to allow the fence to be installed along the property line which is 14 feet from the house.
2. Deny the 14-foot, 11-inch variance request and require the petitioner to install the fence 3 feet off the property line as the current zoning code identifies.

Dave DeRolf representing 8649 Greenwood Avenue introduced himself. Mr. Raffin asked Mr. DeRolf if he understands the petition correctly, that they want to install the fence in the exact same location as it is in now. Mr. DeRolf said that is correct. Ms. Mayer asked Mr. DeRolf if he was the contractor or the property owner. Mr. DeRolf said he is not the property owner. She asked if he knew the history of the property with regards to what existed prior to 2018. Mr. DeRolf said he could not speak to that, as far as he knows, the house has always had it (the fence). He said the fence was painted but he doesn't know if it was ever at another location. He said as far as he can see, it has always been there. He has tried from every angle to go around those trees. Ms. Mayer said, so the proposal he has made to the owner is to replace that fence. Mr. DeRolf said that fence and exactly where it is, that is all they are asking. Ms. Mayer asked Mr. Mendoza if the permit submitted in 2018 was for a fence replacement, that there was

a fence in that same position prior to 2018. Mr. Mendoza said we have records showing a fence position at the time in 2018. Prior to 2018, when that fence was requested, they had submitted the survey he included on page 3 of the staff report which identifies the fence on the property line. At some point in time, Mr. Mendoza said, he suspects that when the fence was installed, it was not installed on the property line but rather 11 inches off the property line. They are asking now, in 2024, to reinstall the in that same location which is 11 inches off the property line in the right-of-way. Ms. Mayer asked if they got a new fence 5 or 6 years ago. Mr. DeRolf said they changed the pickets in 2018. The boards were twisting, they probably did pull a permit for that. Mr. Hemingway said this could be taken to the Town Council. Mr. Mendoza said this is a Developmental Standards variance and the decision rests with the Board of Zoning Appeals. Ms. Mayer said Mr. Mendoza stated earlier that only the Town Council can give them permission to build in the right-of-way. Mr. Mendoza said that is correct. Ms. Mayer asked what has to happen in order to make that happen. Mr. Mendoza said they would have to get authorization from the Town Council to encroach 11 inches into the public right-of way. Ms. Mayer asked if the BZA would make a recommendation to the Town Council. Mr. Mendoza said the petitioner would have to appear before the Town Council requesting to be on the agenda to discuss getting authorization for encroachment into the public right-of-way. Ms. Mayer asked if they would be tabling any decision. Mr. Mendoza said the Board of Zoning Appeals is a quasi-jurisdictional body. They do not make recommendations to other bodies, unlike the Plan Commission, which is an advisory board and makes recommendations, obviously leading to other actions. The action that is requested here before the BZA and which, in fact, is advised is to allow up to the property line, which is 14 feet. That is what the BZA is authorized to grant. Anything outside of that, the petitioner would have to ask authorization from the Town Council, which owns the public rights-of-way. If they were to inquire and be authorized to enter into the public right-of-way, we would add that to the permit record and identify that "this fence now is being relocated 14 feet, 11 inches with authorization from the Town Council". Mr. Petersen addressed Mr. Wickland saying he recalled from his previous time on the BZA that if the BZA denies the petition, that poses a bar on refiling. He asked if the BZA denied the petition, would that negatively impact the petitioner coming before the Town Council. Mr. Wickland said he would have to check on that. Mr. Petersen said so is it fair to say that one of the options is to deny the petition. He said he recalled in the past, another option is when there is an impediment that emerges that would make it difficult or impossible for the BZA to act, there has been a suggestion to withdraw the petition, so they don't suffer a prejudice. He added that he thinks, in this particular instance, and recognizing that staff has correctly determined that the BZA cannot act, this might be something to share or suggest to the petitioner to instead withdraw the petition and take it to the proper venue. Mr. Wickland said that is a good suggestion, to defer. Mr. Raffin said with that tree, there is no way to get that fence back to the 14 feet in that corner. Mr. Mendoza said the applicant has indicated that the location of the tree prohibits them from maintaining a 14-foot fence along the property line. Mr. Raffin said they could fence around the tree and bring it into the rear yard. Mr. Raffin asked if the property owner was present to speak on his own behalf. There was no answer.

Mr. Raffin opened the public hearing. There were no comments, he closed the public hearing.

Motion: Ms. Mayer moved to approve BZA Docket No.23-012 to allow a fence 14 feet from the house along the property line of a corner lot at 8649 Greenwood Avenue.

Second: Mr. Hemingway

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

Mr. Raffin explained to the applicant that they have an approval to build at 14 feet. If they want to build at 14 feet and 11 inches, they will need to go before the Town Council and ask for conditional approval.

b. BZA23-013 Steve Coppolillo is seeking a Developmental Standards Variances to allow one additional Awning Sign along the Drive Aisle Façade at 9601 Calumet Avenue, Ste D.

Mr. Mendoza said Mr. Coppolillo is present to speak on behalf of Rosebud Steakhouse. Currently they have signage which was approved. They are permitted for frontage on the corner lot signage which complies with the zoning code. The current zoning code limits awning signs that face the drive aisle to one awning sign per drive aisle. In this case, they installed two awning signs. This is a corner development, and the restaurant encompasses the entire intersection of the building. There are two interior drive aisles, one facing south and the other facing east. They were permitted one sign and they have installed the second one. They are requesting both of these awning signs facing the interior drive aisles. He included the ordinance in the staff report. Essentially, they are asking for one additional awning sign. He said staff has identified that this is a local business that is at the intersection of an interior drive aisle; it takes up the entire corner.

Petitioner Steve Coppolillo said he is one of the owners of Rosebud Steakhouse at 9601 Calumet Avenue. Mr. Raffin asked if everything that Mr. Mendoza presented was good. Mr. Coppolillo said yes. Mr. Hemingway asked if these were inner signs in the parking lot. Mr. Coppolillo confirmed that they were.

Mr. Raffin opened the public hearing. He closed the public hearing when there were no comments.

Motion: Ms. Mayer moved to approve BZA Docket No. 23-013 allowing one additional Awning Sign along the Drive Aisle Façade at 9601 Calumet Avenue, Ste D.

Second: Mr. Hemingway

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

c. BZA23-014 Nicholas Georgiou for ONSI (Orthopedic Specialists of Northwest Indiana) is seeking multiple Developmental Standards Variances for building setbacks, building materials, frontage buildout, off street parking, screening, primary entrance location, and sidewalks at 9900 Columbia Avenue.

Mr. Mendoza said this is the former Gate Church. The structure is there. They propose to renovate or remodel the interior and exterior of this nearly 10,000 square foot building. This is part of Phase One. They also propose to expand on the existing parking lot to accommodate that expansion. As part of Phase Two, they anticipate adding another 10,000 square foot addition. As part of this proposal, they are requesting multiple variances as outlined in the petition that are also detailed on page 4 of the staff report. Mr. Mendoza explained that the petitioner is seeking the following variances:

- 1.) 26-6.405. A-7 DISTRICT STANDARDS, Setbacks-Principal Building, Principal frontage, and Secondary Frontage. This variance request is for the setback. They have identified a utility easement which requires them to maintain a setback similar to the existing building.
- 2.) 26-6.405. A-7 DISTRICT STANDARDS, Building Standards, Building Materials and Frontage Buildout. This variance request is for the use of material. The zoning code prohibits the use of EFIS to a percentage.
- 3.) 26-6.405. A-7 DISTRICT STANDARDS, Building Standards (continued) Entrances. Our current ordinance requires that the primary entrance be located along the facade building facing the primary road.

- 4.) 26-6.405. A-7 DISTRICT STANDARDS, Vehicular Parking Requirements, Off-street Parking. Parking is permitted within the second and third lot layers. They are proposing parking in the first lot layer.
- 5.) 26.6.405. A-7 DISTRICT STANDARDS, Screens, Types of Screens (Enhanced Hedge), Specific Standards (Where Screen is Required and Permitted Screen Type). The requirement is that they provide screening in the form of a wall or a wrought iron fence along the first lot layer. They are requesting a variance for that. They propose providing additional landscaping instead. From the staff report, Mr. Mendoza showed examples of other developments in the Town of Munster that have been identified as in compliance with the code.
- 6.) 26-6.405. S. 2. DISTRICT STANDARDS, Streetscape Repairs, Replacement & Improvements. They are requesting a variance from the installation of public improvements, a sidewalk along the frontage and primary road. They are requesting a variance not to install sidewalks.

Mr. Mendoza said the staff has reviewed this and recommends the following:

- 1.) Motion to APPROVE Developmental Standards Variance for the Setback of the Principal Building from the Principal and Secondary Frontage, as well as allow Main Entrances not to be located along the facade of the Principal Frontage, and allow Off-Street Parking in the 1st lot layer, Including all Discussion and Findings.
- 2.) Motion to DENY Developmental Standards Variances for the use of the proposed Building Materials on the Frontage Buildout, the elimination of an Enhanced Hedge consisting of an Ornamental Metal Fence or Wall to screen the parking lot in the 1st lot layer, and the request to not install Sidewalk Streetscape Improvement, Including all Discussion and Findings.

Mr. Peterson disclosed that he is practicing attorney here in Munster and he has provided legal services to Nicholas Georgiou, the petitioner, so even though he is a non-voting member, he recused himself from any further participation. Mr. Raffin said they had a long discussion last month and nothing has changed. The EFIS is still there, and the sidewalks are still off.

Nicholas Georgiou of Georgiou Associates representing OSNI, Orthopedic Specialists of Northwest Indiana, introduced himself. He said they are willing to concede EFIS. They discussed that with the owners as the Board requested after the last meeting. They are willing to delete the EFIS, not maintain it, and the owners have agreed to re clad the entire building with material approved by the zoning code. An item that came up after the last meeting was the issue of the enhanced hedge which they had not identified initially. Mr. Mendoza identified it to them. He said that they already have a continuous hedge and additional trees and landscaping on the south side of that parking lot. The missing piece is the metal fence. They are asking for consideration that the landscaping they submitted be approved as submitted. The last item is relative to the sidewalks. He said as was noted in the report that was submitted by staff, both of the sidewalks to any other site are about 1000 feet away. One is 1000 feet to the south and the other is a similar distance to the north where they have "sidewalks to nowhere" because there are no sidewalks to connect to. He said he seriously doubts that those sidewalks will be installed in the future, at least for your consideration. Russ Pozen from DVG at 1155 Troutwine Road, Crown Point, Introduced himself. Mr. Raffin commented said this is an orthopedic office that doesn't want people to walk, adding that If no one puts in sidewalks, (the Town) would never get sidewalks. Ms. Mayer said that the architect has indicated that they have changed their position on the EFIS so, at this point, they are seeking variances for the enhanced hedge, the metal fence. Mr. Georgiou said they are seeking a variance from that to just allow the landscaping they proposed on the plan which is just a continuous hedge plus trees and landscaping as shown on the plans. The only item missing would be the metal iron fence. Ms. Mayer clarified that the only remaining issues are the metal fence and the sidewalks. Mr. Georgiou said yes. Ms. Mayer asked if the Plan Commission had reviewed the landscape

plan. Mr. Raffin said they are coming tonight after the BZA meeting. Ms. Mayer said there will be further discussion about this so the BZA could make a motion to approve those things that have been decided and table those things that have not. Mr. Raffin said we could table at least on the Plan Commission Developmental Standard review. He added that this would be the fence because the sidewalks should stay with the BZA; that is a true variance. When it comes to the developmental standard design whether it was brick, materials, fencing, that would have some jurisdiction with the Plan Commission as well. Ms. Mayer said the petitioner has not represented what their hardship is in meeting the sidewalks and the metal fence. In so saying, it cannot be a financial hardship. She asked if there was a hardship inherent to the land that requires them to request this. Mr. Georgiou said he was only made aware of the enhanced hedge after the previous Plan Commission meeting. He said they are presenting what they have; the decision is to deny their variance and they prove the other items.

Mr. Raffin opened the public hearing. He closed the public hearing when there were no comments.

Ms. Mayer moved to approve developmental standards for setbacks of the principal building, principal and secondary frontage, as well as to allow the main entrance not at the façade of the principal frontage or the corner and to allow street in the first lot layer including all discussions and findings. She said the petitioner has agreed to comply with our building materials so no variance is requested regarding building materials. Mr. Georgiou said that is correct. Ms. Mayer said rather than denying the petition for the sidewalks and the metal fence, they will defer to the Plan Commission for their review of those things. Mr. Raffin said the sidewalks should be here at the BZA. Mr. Raffin said we can make a motion on those items we are approving tonight. He said on the items they are not approving tonight, and they go to Plan Commission, there is not a one year waiting period. It would be deferred to the Plan Commission; there is no ruling, they are not approved or denied, it is continued to the Plan Commission. Mr. Georgiou asked for clarification. The EFIS will be rejected, the other three will be approved. He asked for clarification on the enhanced hedge, if that would be part of the developmental standard review, and the sidewalks. Mr. Raffin said they are changing the EFIS. The lot layer items are being voted on and approved. Sidewalks are going in as presented on the plan. The only thing not being voted on is the enhanced hedge. Ms. Mayer moved to approve the developmental standards variance for the setbacks of the principal building, for the principal and secondary frontage as well as main entrances not to be located along the facade from the principal road and to allow off street parking along the first lot layer including all discussions and findings. We are tabling the advanced hedge. Mr. Mendoza was asked to go line by line on the variances for voting purposes. When asked if the EFIS was a deny motion, Mr. Raffin said yes.

1. 26-6.405. A-7 DISTRICT STANDARDS, Setbacks-Principal Building, Principal frontage, and Secondary Frontage.

Motion: Ms. Mayer moved to approve BZA Docket No. 23-014- Variance 1 allowing an increase in the building setback.

Second: Mr. Hemingway

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

2. 26-6.405. A-7 DISTRICT STANDARDS, Building Standards, Building Materials and Frontage Buildout.

Motion: Ms. Mayer moved to deny BZA Docket No. 23-014- Variance 2 not allowing the use of EFIS as a building material.

Second: Mr. Hemingway

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

3. 26.6.405. A-7 DISTRICT STANDARDS, Building Standards (continued) Entrances.

Motion: Ms. Mayer moved to approve BZA Docket No. 23-014- Variance 3 allowing the primary entrance location along the drive aisle façade.

Second: Mr. Hemingway

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

4. 26-6.405. A-7 DISTRICT STANDARDS, Vehicular Parking Requirements, Off-street Parking.

Motion: Ms. Mayer moved to approve BZA Docket No. 23-014- Variance 4 allowing off-street parking in the first lot layer.

Second: Mr. Hemingway

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

5. 26.6.405. A-7 DISTRICT STANDARDS, Screens, Types of Screens (Enhanced Hedge), Specific Standards (Where Screen is Required and Permitted Screen Type).

Motion: Ms. Mayer moved to defer BZA Docket No. 23-014- Variance 5 to the Plan Commission.

Second: Mr. Hemingway

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

6. 26-6.405. S. 2. DISTRICT STANDARDS, Streetscape Repairs, Replacement & Improvements.

Motion: Ms. Mayer moved to deny BZA Docket No.23-014- Variance 6 request from the required installation of public improvements, a sidewalk along the frontage and primary road.

Second: Mr. Hemingway

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

Findings of Fact:

- a. **BZA23-010 Attorney Jim Weiser with Crew Car Wash received multiple Developmental Standards Variances for an off-site dumpster location, landscaping, and alterations to a sign pole at 111 Ridge Road.**

Motion: Mrs. Mayer moved to approve the Findings of Fact for BZA Docket No. 23-010.

Second: Mr. Hemingway

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

Continued Discussion Items/Other Business:

- a. **2024 Board of Zoning Appeals Meeting Dates and Filing Deadlines.**

Mr. Mendoza said there is a new Board of Zoning Appeals meeting schedule in preparation for 2024. This is for the public to review and understand when the meeting dates are and when the panel deadlines are. This schedule allows 21 days between meetings for staff to prepare the documents for the Board to review. The dates were also based upon last year's final deadlines. He said there is no action required of the Board. Mr. Raffin asked if it was possible to get to the documents sent to the Board members a week before the meetings to review and process things, to drive around and look at (project sites). Mr. Mendoza said this is one of the things we are trying to do internally. We are trying to help petitioners of the BZA and Plan Commission specifically to help them in identifying their final deadlines. Unfortunately, he said he could not locate the most current copy of the Rules and Procedures

one from 1990 is the most current copy he found, and it had very vague deadlines. Mr. Raffin said he would expect if someone is filing these 21 days in advance, it is a complete packet. They should not be filing something and then spoon feeding it to the staff and then to us. It should be a complete packet that we should not have to adjust at all. He said a lot of times, the Board members get things at the last minute or the day before because the developer didn't do their due diligence. We are then scrambling around to decide on something that really should not be voted on at all because the proper work has not been done on the front. Mr. Mendoza said he is correct; he appreciates that comment and staff will work with the applicants to make sure they know that a deadline has ended for a complete application and that there is support from the Board. A complete application must be submitted. He also wants the Board members to know that if they feel they have not received enough information by the final deadline, the Board has the ability to table and defer. Mr. Raffin said when they have a full agenda and are seeing things that are not really ready, that is very time consuming.

b. Update on the garage issue at the residence of Mr. Dust at the corner of Fran Lin and Oriole.

Ms. Mayer asked for a report on the Michael Dust situation. Mr. Mendoza said they are looking at documents that are on file, mostly violations issued for said property. He said they did get a legal opinion on this matter. That opinion identifies the next course of action as an option for the Town to file an injunction against the property owner. Unfortunately, we have been advised that Code Enforcement has limited capabilities in issuing citations. This matter will be brought with their findings and those of the violations, to the Town Manager's office to be discussed with the Town Council to see what measures to take next. Mr. Raffin said he drove by the night before and they are using this as a garage. Mr. Petersen said he recalls this matter back then and now. He has represented Mr. Michael Dust as an attorney in Munster. In the extent of any further involvement, he recuses himself.

Next Meeting: Mr. Raffin announced the next regular business meeting will be held on February 13, 2024, beginning at 6:45 pm.

Adjournment:

Motion: Mr. Hemingway moved to adjourn.

Second: Ms. Mayer

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

Meeting adjourned at 7:36 pm

Chairman Roland Raffin
Board of Zoning Appeals

Date of Approval

Executive Secretary Sergio Mendoza
Board of Zoning Appeals

Date of Approval