

**TOWN OF MUNSTER  
BOARD OF ZONING APPEALS  
STAFF REPORT  
TUESDAY, MARCH 14, 2017, 7:00 PM**

1. Petition BZA 17-001 – 45<sup>th</sup> Street Properties, LLC; c/o Scott Yahne requesting a special use for climate controlled interior storage facility at 1800-1864 45<sup>th</sup> Street.

**BACKGROUND**

*Current Zoning is PUD.*

*The Petitioner is requesting to allow a climate controlled storage facility within their existing facility.*

*The property received PUD zoning status in January of 2002. The ordinance states the use of the real estate shall be limited to those uses permitted in a Commercial Zoning District as set out in Chapter 26 of the Munster Town Code. Section 26-601 (b) Prohibited Uses (4) states:*

*“Lumber and building material storage yards, coal yards and places for the handling of other fuels, and storage warehouse.”*

*Staff interprets this to mean storage facilities are a prohibited in C-1. Further, storage facilities are not listed as a permitted use in C-2 (Sec. 26-621(1)). Storage facilities are permitted within the M zoning district (Sec. 26-731(a)(2)).*

**RECOMMENDATION**

*Petitioner is seeking verification from the Board that Staff has interpreted the code correctly. If the Board concurs with the Staff's interpretation; Staff recommends the Board set the Petition for Public Hearing to request a Special Use under Sec. 26-454 of the Munster Code. If the Board finds the Staff's interpretation is in error, the Petitioner can move forward with the use with no further action by the Board.*



Re: Use Authorization Request- HiTec Storage

Scott E. Yahne

to:

Craig Hendrix

01/25/2017 10:13 AM

Cc:

Stephanie Shambo, bmcshane, Marty Shreibak, Beth Miller, Dustin Anderson

Hide Details

From: "Scott E. Yahne" <scott@yahnelawpc.com> Sort List...

To: Craig Hendrix <chendrix@sehinc.com>

Cc: Stephanie Shambo <admin@yahnelawpc.com>, bmcshane@mcshanes.com, Marty Shreibak <mshreibak@icandm.com>, Beth Miller <bmillier@sehinc.com>, Dustin Anderson <danderson@munster.org>

History: This message has been replied to.

Good Morning, Craig:

Thank you for your message and response to my request submitted on behalf of Brian and Marty. Initially, although I respect your interpretation, I do have some question concerning the interpretation that my client's proposed use could be properly defined as a "warehouse" and thus be prohibited as a C-1 use. Unfortunately, other than loading or parking provisions pertaining to warehouses, the only real use of the word "warehouse" in the Zoning Ordinance comes from Section 26-601 (b) (4), which you've cited below. That section read in its entirety is as follows:

(4) Lumber and building material storage yards, coal yards and places for the handling of other fuels, and storage warehouses.

To my eyes and interpretation, my client's intended use does not qualify as a "warehouse". Certainly, my client will not be storing lumber, building material, coal, fuels or other sorts of materials that Section 26-601 (b) (4) seems to be addressing. I tried to convey the nature of my client's intended operation, but it is largely akin to a retail usage, where customers will have the option to store valuables in a climate controlled environment that could not be stored a warehouse or outdoor storage type setting. To the extent it would be helpful, my clients are prepared to share more information concerning the intended usage.

As you likely know, the PUD was approved at a time when a grocery store was located in the space that is being proposed for this usage. In many ways, a grocery store would be more akin to a warehouse than my client's current proposed use (i.e. semi trucks making delivery of product -arguably raw material-for storage and eventual sale). Since that use was approved as part of the PUD that was more like a warehouse setting, it doesn't seem to me that my client's proposed use should require special authorization. Additionally, There exists actual warehouse space for the tenants on the west side between Lamp Shade House and Ace Hardware, which has been utilized since 1968.

Finally, since there is no definition section within the Zoning Ordinance to specifically describe the term "warehouse", we would necessarily need to invoke the common understanding of that term from external sources. I acknowledge that we are likely to find varying definitions with slightly different expressions of that term, but I think fundamentally we will find that my client's intended use does not fall within those definitions. When I simply Googled "warehouse definition", this is the first definition that appeared on my screen:

# ware·house

*noun*

*/ˈwerˌhous/*

1. a large building where raw materials or manufactured goods may be stored before their export or distribution for sale.

*synonyms:* [depot](#), [distribution center](#), [storehouse](#), [store](#), [storeroom](#), [depository](#), [storage](#), [entrepôt](#), [stockroom](#); [More](#)

*verb*

*/ˈwerˌhouz, ˈwerhous/*

1. store (goods) in a warehouse.

From several perspectives, this definition necessarily excludes what my clients propose to do on site. I recognize that we will find other definitions, but fundamentally, the stored materials will not be offered for sale, distribution or export. And, my clients will not be storing raw materials or what we would reasonably consider “manufactured goods”.

For the above reasons, I’m hoping that you might reconsider and issue the authorization letter initially sought by my clients. I would welcome the opportunity to provide additional information, if needed, and further assist in the dialogue and conversation to consider this issue. Thank you.

Scott

**YAHNE.LAW<sub>PC</sub>**

SCOTT E. YAHNE

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On Jan 24, 2017, at 7:04 PM, Craig Hendrix <[chendrix@sehinc.com](mailto:chendrix@sehinc.com)> wrote:

Scott:

I have carefully reviewed the request for concurrence to allow a climate controlled storage facility at the Pavilion on 45th Shopping Center. I do; however, disagree with your assertion that this use is permitted within this PUD. Ordinance No. 1178 establishing the PUD and its use restrictions states that the use shall be limited to those permitted in a Commercial Zoning District as set out in Chapter 26 of the Munster Town Code. Section 26-601 (b) (4) discussing prohibited uses in a C-1 district, states storage warehouses are prohibited. Further, Section 26-621 discussing permitted uses in C-2 does not list storage facilities as a permitted use.

If you clients wish to pursue this use, I believe they have two avenues: (1) include this use in their PUD Amendment request with the Plan Commission; or (2) submit a request for a special use to the BZA with ultimate approval from the Council (Sec 26-454 and Sec 26-851).

Please review my comments with your clients and let me know how they wish to proceed.

Regards

Craig Hendrix, PE | Associate  
Senior Project Manager  
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From: Stephanie Shambo <[admin@yahnelawpc.com](mailto:admin@yahnelawpc.com)>  
To: Craig Hendrix <[chendrix@sehinc.com](mailto:chendrix@sehinc.com)>  
Cc: [bmcshane@mcshanes.com](mailto:bmcshane@mcshanes.com), [mshreibak@icandm.com](mailto:mshreibak@icandm.com)  
Date: 01/17/2017 02:50 PM  
Subject: Use Authorization Request- HiTec Storage

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Good Afternoon Mr. Hendrix,

Attached please find correspondence regarding the above matter per Scott Yahne. If there is any trouble downloading the documents please let me know. Thank you and have a wonderful day!

[attachment "2017.01.17 SEY ltr to Hendrix .pdf" deleted by Craig Hendrix/seh] [attachment "2017.01.16 Zoning Letter Attachments.pdf" deleted by Craig Hendrix/seh]

Stephanie Shambo

**Legal Assistant**  
**9301 Calumet Ave. Suite 2F**  
**Munster IN, 46321**  
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BZA 17-001  
DATE 03-07-17  
FEE \$ 300  
PMS 25  
325<sup>00</sup>

## TOWN OF MUNSTER APPLICATION FOR SPECIAL USE PERMIT

NOTE: APPLICATION MUST BE COMPLETED AND FILED WITH THE CLERK-TREASURERS OFFICE, 1005 RIDGE ROAD, MUNSTER INDIANA, AT LEAST 10 DAYS PRIOR TO BOARD OF ZONING APPEALS MEETING AT WHICH THE BOARD IS TO CONSIDER SUCH APPLICATION. IF THE APPLICANT IS OTHER THAN THE OWNER OF THE PROPERTY, OWNER MUST ALSO SIGN THE APPLICATION, OR SUBMIT A LETTER AUTHORIZING APPLICANT TO ACT ON OWNERS BEHALF.

APPLICANT 45th Street Properties, LLC  
PHONE \_\_\_\_\_ (219) 513-9892-Scott E. Yahne, Attorney

ADDRESS 1830 45th Ave. Munster, IN 46321

PROPERTY OWNER 45th Street Properties LLC PHONE 219 924-1400

OWNERS  
ADDRESS 2846 45th Street, Suite B, Highland, IN 46322

GENERAL LOCATION OF SUBJECT  
PROPERTY \_\_\_\_\_

Pavilion on 45th Shopping Center located at 1800-1864 45th Street

LEGAL DESCRIPTION OF PROPERTY Lot 1 in Burger's 45th Avenue Addition to the Town of Munster, as per plat thereof, recorded in Plat Book 39, page 45, in the Office of the Recorder of Lake County, Indiana.

CONTAINING 11.35 ACRES CURRENT ZONING PUD/C-1 DATE PURCHASED 5/1/2001  
(AREA)

SPECIAL USE  
REQUESTED climate controlled interior storage facility

ORDINANCE Section 26-601(b)(4) restricts the following uses: Lumber and building material storage yards, coal yards and places for the handling of other fuels, and storage warehouses.

PROPOSED USE HiTec Storage. Retail style business offering climate controlled storage to customers.

I AM REQUESTING THE SPECIAL USE FOR THE FOLLOWING REASON \_\_\_\_\_

Petitioner respectfully asks this Board to determine that Section 26-601(b)(4) does not restrict Petitioner's intended use because Petitioner believes that the proposed use does not qualify as a "warehouse". However, Petitioner understands and respects that the Town's Engineer has reached a different conclusion and, therefore, alternatively respectfully requests approval of Petitioner's proposed use as a Special Use, pursuant to Section 26-854.

ATTACHMENTS: APPLICANT MUST SUBMIT TEN (10) COPIES OF THE LEGAL PLAT IN ACCORDANCE WITH THE REQUIREMENTS LISTED IN THE TOWN OF MUNSTER ZONING ORDINANCE.

SIGNATURE OF APPLICANT \_\_\_\_\_ DATE February 6, 2017

Scott E. Yahne, Yahne.Law, PC, Attorney for Petitioner

