

MUNSTER BOARD OF ZONING APPEALS
MINUTES OF REGULAR BUSINESS MEETING

Meeting Date: October 10, 2017

Date of Approval: _____

Call to Order: A regular business meeting of the Munster Board of Zoning Appeals was held in the Munster Town Hall, Munster, Indiana on October 10, 2017. The meeting convened at 7:00 pm, Chairman Friedman presiding and Tom Vander Woude, secretary.

Pledge of Allegiance

Members in Attendance:

Stuart Friedman, *Chairman*
Daniel Buksa
Sharon Mayer
Michael Mellon
Jonathan Petersen
Dave Nellans, *Town Council Liaison*

Members Absent:

Staff Present:

David Wickland (*Attorney*)
Dustin Anderson (*Town Manager*)
Tom Vander Woude (*Planning Director*)

Approval of Minutes:

Motion: Mr. Buksa moved to approve the minutes for the regular business meeting of the Munster Board of Zoning Appeals of September 12, 2017.

Second: Mr. Mellon seconded the motion.

Vote: Yea – 5 Nay – 0 Abstain – 0

Resolved: Minutes from the regular business meeting of September 12, 2017 were approved.

Preliminary Hearings:

- a. **Petition BZA 17-004 – Sara Traynor of Mr. Fun LLC (Johnny’s Tap), 8050 Calumet Avenue, requesting a special use for an open lot retail or service business in a C-1 business district in order to construct an outdoor dining area.**

Mr. Vander Woude stated that he had received an email from the petitioner requesting that the public hearing be rescheduled to November 14, 2017 to allow time to gather additional information.

Motion: Mr. Mellon moved to reschedule the public hearing for Petition BZA 17-004 to November 14, 2017.

Second: Mr. Buksa seconded the motion.

Vote: Yea – 4 Nay – 1 Abstain – 0

Resolved: Motion carries.

Public Hearings:

- a. **Petition BZA 17-005 – Robert Pelino of 9809 Margo Lane requesting a variance from Sec. 26-514 of the Munster Zoning Ordinance to permit a tree house that encroaches into a side and rear setback.**

Mr. Pelino of 9809 Margo Lane presented his petition to permit a tree house in his side and rear yard. He stated that he had prepared more detailed plans which he believed were provided to the Board.

Mr. Wickland stated that the public notices are in order.

Mr. Mellon asked whether there was electricity or plumbing service in the tree house. Mr. Pelino responded no.

Mr. Buksa asked whether the remonstrance received by the Town was within 200 feet of the subject property. Mr. Vander Woude responded no.

Mr. Nellans asked whether the covenants in the neighborhood restrict accessory structures. Mr. Pelino responded that he was not aware of this covenant and believed that only sheds were prohibited. Mr. Friedman asked Mr. Pelino if he was stating on the record that the structure does not violate any covenants. Mr. Mellon stated that the Town does not enforce covenants.

Mr. Mellon asked Mr. Pelino to state his hardship. Mr. Pelino said there was a safety issue; the location of the tree house is visible from the house windows.

Mr. Buksa asked is this an accessory structure. Mr. Vander Woude stated that in the judgment of the Chief Building Inspector this meets the definition of an accessory structure. It includes poured footings and would require an inspection. Ms. Mayer stated that the board has approved these in the past. Mr. Mellon stated the litmus test is whether the neighbors oppose the project because it alters the character of the neighborhood.

Mr. Friedman opened the public hearing.

John Reed of 9717 Margo Lane stated that he represents the developer. The covenants state that appurtenances are not permitted unless attached to the house and built of the same materials. There are places in the neighborhood for children to play. The reason there are covenants in place is to protect those who want to live in a controlled environment.

Rita Traxler of 9857 Margo Lane stated that she was thrilled at the landscaping improvements and believes Mr. Pelino is beautifying the neighborhood.

Phyllis Krull of 9810 Crimson Tree Lane stated that her grandchildren live nearby on Leicester, directly behind the subject property. She supports Mr. Pelino's petition.

Ron Becich of 108 Leicester stated that his wife sent the remonstrance and that they moved to neighborhood because there are covenants in place.

Rosalyn Jovanovich of 1820 Redwood Lane stated that there is a large boat-like structure in a rear yard that is visible from White Oak. The Town permitted this. She supports the variance. Mr. Mellon stated that each variance is granted based on unique circumstances and the fact that the Town permitted any other structure is not a reason to grant this variance.

Mr. Friedman closed the public hearing.

Ms. Mayer asked whether the board is required to take into account the subdivision covenants. Mr. Wickland responded no. Ms. Mayer asked what the specific issue is. Mr. Vander Woude responded that the petition is for a variance to encroach on the required setbacks.

Mr. Buksa asked Mr. Pelino whether he would be willing to put a time limit on the variance and remove the tree house when his children reach a certain age. Mr. Mellon stated that he was opposed to a time limit.

Mr. Petersen asked Mr. Pelino if he could see his children from his window if the tree house was built elsewhere in his yard. Mr. Pelino said no. Mr. Petersen said that is a hardship. Mr. Petersen asked whether he would be able to gather with his neighbors if the tree house was placed in the other corner of the property. Mr. Pelino said no. Mr. Petersen said that is a hardship. Mr. Petersen asked whether he could build the tree house in another location. Mr. Pelino said no. Mr. Petersen said that is a hardship.

Mr. Buksa asked whether the sheet of neighbors' signatures is legal evidence. Mr. Wickland stated they are support.

Ms. Mayer said she was concerned about the height. Mr. Pelino said he would plant trees in his yard and in the parkway to screen the tree house. He then distributed a planting plan. Ms. Mayer said she believes the tree house is too high. Mr. Vander Woude stated the maximum height is 14 feet. The structure is less than 14 feet. Mr. Mellon stated we are not looking at height, only setbacks. Ms. Mayer stated that if it was smaller, it would be less offensive.

Mr. Petersen moved to approve Petition BZA 17-005. Mr. Buksa seconded the motion. Mr. Wickland stated that recent court cases allow the board to define the hardship. Mr. Petersen asked whether the board could be challenged for granting a variance. Mr. Wickland said he could not state that. Mr. Mellon moved to amend the motion to grant approval conditioned upon approval by the body that enforces the covenants of the West Lakes subdivision. The motion failed for lack of a second.

Motion: Mr. Petersen moved to approve Petition BZA 17-005.

Second: Mr. Buksa seconded the motion.

Motion: Mr. Mellon moved to amend the motion to grant approval conditioned upon approval by the body that enforces the covenants of the West Lakes subdivision.

Second: Motion to amend dies for lack of a second.

Vote: Yea – 2 Nay – 3 Abstain – 0

Resolved: Motion fails.

Motion: Mr. Mellon moved to approve Petition BZA 17-005 conditioned upon approval by the body that enforces the covenants of the West Lakes subdivision.

Second: Mr. Buksa seconded the motion.

Vote: Yea – 3 Nay – 2 Abstain – 0

Resolved: Motion passes.

Findings of Fact:

- a. None.

Additional Items for Discussion:

a. None.

Next Meeting: Chairman Friedman announced that the next regular business meeting will be November 14, 2017 at 7:00 p.m.

Adjournment:

Motion: Mr. Petersen moved to adjourn the meeting.

Second: Mr. Buksa seconded the motion.

Vote: Yea—5 Nay—0 Abstain—0

Resolved: Motion carries.

Meeting adjourned at 8:09 p.m.

Executive Secretary Thomas Vander Woude
Board of Zoning Appeals

Date of Approval

Chairman Stuart J. Friedman
Board of Zoning Appeals

Date of Approval