



BOARD OF ZONING APPEALS STAFF REPORT

To: Board of Zoning Appeals

From: Sergio Mendoza, Planning Director

Meeting Date: December 10, 2024

Agenda Item: BZA 24-009

Hearing: Public Hearing

Application Type: Conditional Use

Summary: 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.

Applicant: Good Oil Company, Inc. represented by Sukhwinder Singh Basra (Dickie)

Property Address: 9451 Calumet Avenue

Current Zoning: CD-4.A General Urban Character District

Adjacent Zoning: North: CD-4.A
South: CN Railroad
East: CD-4.R-4/CD-3.R-1
West: PUD Maple Leaf

Applicant Requesting: Favorable Recommendation to the Town Council

Additional Actions Required: Review Conditions of Approval and Additional Criteria
Findings of Fact
Town Council Consideration

Staff Recommendation: Favorable Recommendation with conditions

Attachments: EXHIBIT A Application with supporting documents
EXHIBIT B Previous action and Findings

LOCATION

Figure 1: Subject property with proposed car wash outlined in red.

BACKGROUND

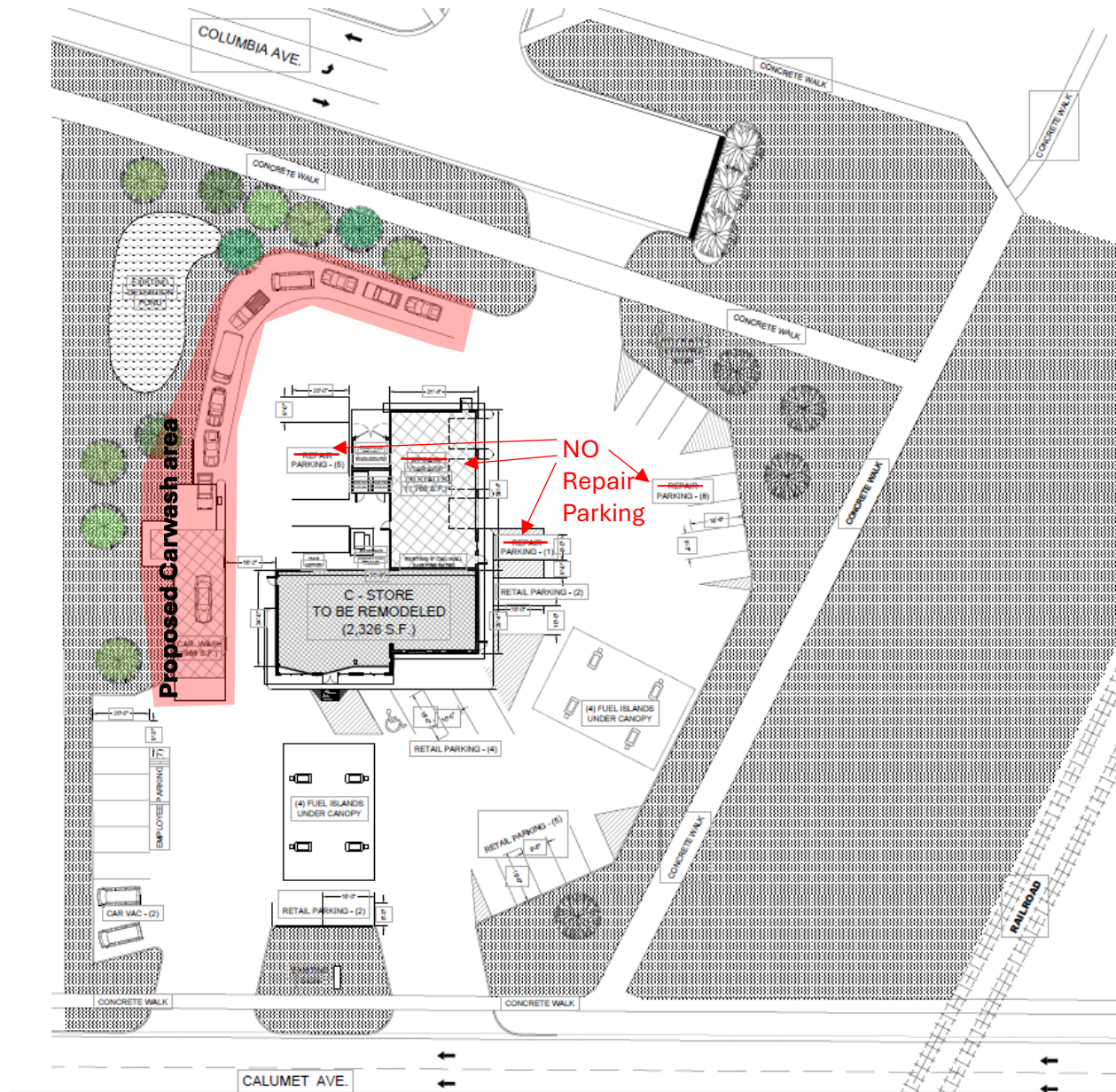
Good Oil Company Inc. is the owner of the property located at 9451 Calumet Avenue. The site contains two buildings: a Marathon gas station and convenience store with an attached automobile service center and a 965 square foot accessory building that was formerly used as a car wash, but most recently as an alignment bay for the automobile service center. The gas station and convenience store are operational, but the service center and accessory building have not been in use for over four years.

The applicant is proposing to remove the vehicle lifts and other equipment from the accessory building and to reuse it as a car wash.

The subject property received variances in 2013 from the parking lot fencing requirements, landscape irrigation requirements, and internal landscaping requirements of the Munster Zoning Ordinance.

The accessory building does not meet the minimum setback requirements of the CD-4.A district. An application has been submitted for a variance which still must be obtained if the conditional use is approved by the Town Council.

EXISTING SITE PLAN



CONDITIONAL USE CRITERIA

Conditions of approval questions

Sec. 26-6.405.L.g of the Munster Municipal Code states that no conditional use shall be granted by the board of zoning appeals unless the conditional use:

- i. It is in fact a Conditional Use (“CU”) listed for the applicable Zoning District involved;
- ii. It will be harmonious with and in accordance with the general and specific intent, purposes and objectives of this Article as stated in Section 26-6.105 and the Town’s Comprehensive Plan;
- iii. It will be designed, constructed, operated, and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and will not change the essential character of the same area;
- iv. It will not be hazardous or disturbing to existing neighboring uses;
- v. It will be served adequately by essential public facilities and services such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and sewer, and schools; or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services;
- vi. It will not create excessive additional requirements at public expense for public facilities and services and will not be detrimental to the economic welfare of the community;
- vii. It will not involve uses, activities, processes, materials, equipment or conditions of operation that will be detrimental to any persons, property, or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare or odors;
- viii. It will have vehicular approaches to the property, which shall be so designed as not to create an interference with traffic on surrounding public thoroughfares; and
- ix. It will not result in the destruction, loss, or damage of a natural, scenic, or historic feature of major importance.

Additional Conditions for Motor Vehicle Uses

A car wash is classified as a Motor Vehicle Shop Maintenance / Repair / Service / Cleaning use in the Munster Zoning Ordinance, which Table 26-6.405.A-6 identifies as a Conditional Use in the CD-4.A district and therefore subject to the following additional criteria.

1. No Gasoline Station, Motor Vehicle Sales, Rental, or Leasing, Motor Vehicle Storage, Motor Vehicle, Motor Vehicle Body Shop, Maintenance, Repair, Service, or Cleaning, or other Motor Vehicle-Related Uses shall have an opening in any Wall less than 15 feet from any property or street line.
2. No Gasoline Station, Motor Vehicle Sales, Rental, or Leasing, Motor Vehicle Storage, Motor Vehicle, Motor Vehicle Body Shop, Maintenance, Repair, Service, or Cleaning, or other Motor Vehicle-Related Use shall have an entrance closer than 200 feet from a School, Library, Place of Worship, or other Place of Assembly, Civic Space, Civic Zone, Fire Station, or Restaurant, or closer than 1,200 feet from another Gasoline Station, Motor Vehicle Sale, and other Motor Vehicle-Related Use, except at intersections.

3. Whenever a Motor Vehicle-Related Use is Adjacent to a Residential District, a Screen at least five feet (5') in height shall be constructed and maintained along the full length of the sides of the Adjacent side of the Motor Vehicle-Related Use, and whenever lighting is used in connection with Motor Vehicle-Related Use, it shall be so designed that no glare is visible from any Adjacent CD-3, CD-3.R1, CD-3. R2, CD-3.R3, CD-4.R4, CD-4.A or CD-4.B Districts, any Civic Zone, or any public Thoroughfare.

FINDINGS and RECOMMENDATION

Staff finds that the proposed carwash use is listed as a Conditional Use and once was an existing use with no known violations of SECTION 26-6.105 or objectives of the Town's Comprehensive Plan. The accessory structure has previously operated as an accessory use maintaining the same characteristics of the area around the existing neighborhood. The accessory use has been adequately served by public facilities and has access to public streets with no impact to school or cause of public expense. At this time there is no known production of excessive traffic, noise, smoke, fumes, glare or odors and there is no evidence of loss, or damage of a natural, scenic, or historic features.

In addition, staff finds the existing accessory structure previously used and proposed carwash use is less than 15 feet from any property or street line. Also, the Motor Vehicle Use entrance is not closer than 200 feet from a School, Library, Place of Worship, or other Place of Assembly, Civic Space, Civic Zone, Fire Station, or Restaurant. However, it is closer than 1,200 feet from a gasoline station, which is on the same lot. Finally, the Motor Vehicle-Related Use is not adjacent to a Residential District but it is within proximity of a residential district along the east property line and should this interest advance, staff would recommend the que area for the car wash be screened per TABLE 26-6.405.A-6 DISTRICT STANDARDS where Parking Lots and Parking Areas at Frontage in 1st or 2nd Lot Layer be screened by a 3'-3.5' Wall or Enhanced Hedge.

MOTION

The Board of Zoning Appeals may consider the following motion:

Motion to forward a favorable recommendation for BZA 24-009 CONDITIONAL USE for a car wash at 9451 Calumet Avenue with the condition that the car wash be located in the existing accessory building as an accessory use and that an enhanced buffer screen be installed along the stacking area fronting the Residential District.



EXHIBIT A

Petition BZA 24 - 009

Date: _____

Application Fee: \$ _____

Sign Fee: \$ _____

Town of Munster Board of Zoning Appeals Petition Application

OWNER INFORMATION:

Good Oil Co Inc

574-225/1266 or 574-946-4863

Name of Owner

Phone Number

1201 N US Hwy 35, Winamac, IN 46996

l_henry@goodoilcompany.com

Street address, City, ST, ZIP Code

Email address

APPLICANT OR PETITIONER INFORMATION (if different than above):

Sukhwinder Singh Basra (Dickie)

219-608-0031

Name of Applicant/Petitioner

Phone Number

9451 Calumet Ave, Munster IN 46321

dickiesliquor16@gmail.com

Street address, City, ST, ZIP Code

Email address

PROPERTY INFORMATION:

DB Petroleum

219-836-6082

Business or Development Name (if applicable)

9451 Calumet Ave, Munster IN 46321

Address of Property or Legal Description

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):

We request to re-open the existing car wash at this location. Owner and lessee have together made many improvements to this property and wish to finalize those improvements by reincorporating the car wash as part of the business services.

Please see attached for the list of variances or conditional use items.

Name of Registered Engineer, Architect or Land Surveyor

Phone Number

Street address, City, ST, ZIP Code

Email address



Petition BZA 24 - 009

Town of Munster Board of Zoning Appeals Application Signature Page

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

Signature of Owner

Date

Signature of Applicant

Date

REQUIRED ATTACHMENTS

Required Attachments for Board of Zoning Appeals Applications

To ensure that adequate information is provided to the BZA, please check off each of these items and provide documentation to the Community Development Department at the time of submittal of the application.

ALL APPLICATIONS	Included	N/A
Narrative statement describing project	x	
Property owner consent (Signature page)	x	
Proof of Ownership (e.g. copy of tax bill)	x	
Plat of Survey depicting current conditions		
Site Plan containing the following:		
Boundary identification	x	
Fire hydrant locations		
Accessory structures		
Parking lot design	x	
Utility location		
Building footprints	x	
Proposed curb cuts		
Drainage/detention plans		
Traffic circulation	x	
Ingress/egress locations	x	
Major topographic information	x	
Infrastructure improvements		
Conditions of Approval Form (Note: complete the form specific to your petition)*	x	
Any other information that the BZA may find useful in determining whether the application is merited.		

* Unique conditions have been established for special use permits for public garages, gas filling stations, used car lots, garden centers, massage parlors, adult bookstores, tattoo parlors, adult cabarets, and outdoor dining areas. Community Development staff will advise potential applicants of these at the pre-application meeting.

NOTE: If you checked any exhibits "N/A", please explain:

CONDITIONAL USE CONDITIONS OF APPROVAL (PAGE 1 of 2)

The Munster Board of Zoning Appeals is authorized to hear petitions for conditional uses and to forward the petition to the Munster Town Council with a recommendation to approve, a recommendation to deny, or no recommendation. The Board of Zoning Appeals may also recommend reasonable conditions and restrictions. Sec. 26-6.405.L.4 of the Munster Zoning Code states that no conditional use shall be granted by the Munster Town Council unless the special use meets the conditions listed below.

Please explain how the proposed use meets these conditions.

- 1. It will be harmonious with and in accordance with the general and specific intent, purposes and objectives of Section 26-6.105, that is, it promotes and is necessary to the health, safety, general welfare, comfort, and convenience of the Town and its residents, and the Town’s Comprehensive Plan.

The car wash will blend in with the improvements made to date to this property. Calumet is a main thoroughfare through Munster and will be a convenience to the Townspeople.

- 2. It will be designed, constructed, operated, and maintained to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and will not change the essential character of the same area.

The car wash equipment will be reinstalled in the existing building to its originality therefore not changing the character of the area.

- 3. It will not be hazardous or disturbing to existing neighboring uses.

There will be no hazardous waste on the property and all precautions for proper drainage will be utilized.

- 4. It will be served adequately by essential public facilities and services such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and sewer, and schools; or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services.

The building has parking space around the building allowing for repairs/upgraded to the building without disturbing the traffic flow. Public service are available to all customers.

CONDITIONAL USE CONDITIONS OF APPROVAL (PAGE 2 of 2)

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-
-
5. It will not create excessive additional requirements at public expense for public facilities and services and will not be detrimental to the economic welfare of the community.

There will be no excessive additional requirements with the car wash. The car wash will generate additional revenue for the lessee and the Town of Munster through local income taxes. The property will be maintained appropriately by the owners and lessee.

6. It will not involve uses, activities, processes, materials, equipment, or conditions of operation that will be detrimental to any persons, property, or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare or odors.

The equipment to run the car wash will be within the confinements of the building. there will be no equipment located outside of the car wash building, which would cause unnecessary mess or encumbrance.

7. It will have vehicular approaches to the property, which shall be so designed as not to create an interference with traffic on surrounding public thoroughfares.

The building is conducive with the flow of traffic in its present location. There are three points of entry/exit 2 on Calument and 1 on Colubia Ave. There is adequate room on the property for vehicles to enter and exit the establishment safely.

8. It will not result in the destruction, loss, or damage of a natural, scenic, or historic feature of major importance

The current landscape around the building has been upgraded and will be maintained.

Attach additional pages if necessary

DATE	NO. 1012	AS BOUND	DATE	BY
REVISION	DATE	BY	DATE	BY
REVISION	DATE	BY	DATE	BY
REVISION	DATE	BY	DATE	BY
REVISION	DATE	BY	DATE	BY



MOHLER ARCHITECTS
 A Professional Corporation
 9451 Calumet Ave., Suite 100
 Munster, Indiana 46321
 Phone: (219) 886-1111 Fax: (219) 886-1112
 www.mohlerarchitects.com

SITE PLAN
REMDEL OF C-STORE
GOOD OIL COMPANY
9451 CALUMET AVE.
MUNSTER, INDIANA 46321

HAMSTRA BUILDERS, INC.
 CONTRACTORS & DEVELOPERS
 1000 NORTH 10TH STREET - SUITE 200
 MISHAWA, INDIANA 46340
 PHONE: (219) 886-1111 FAX: (219) 886-1112
 WWW.SITE: http://www.hamstradrp.com

101

PARKING CALCULATIONS

SERVICE STATION = 8 SPACES / 1000 S.F. BUILDING AREA
 = 1750 S.F. 1000 S.F. = 9 SPACES REQUIRED
 14 RETAIL PARKING SPACES PROVIDED

RETAIL = 4.0 SPACES / 1000 S.F. BUILDING AREA
 = 4.8/1000 X 2,228 = 10 SPACES REQUIRED
 19 RETAIL PARKING SPACES PROVIDED

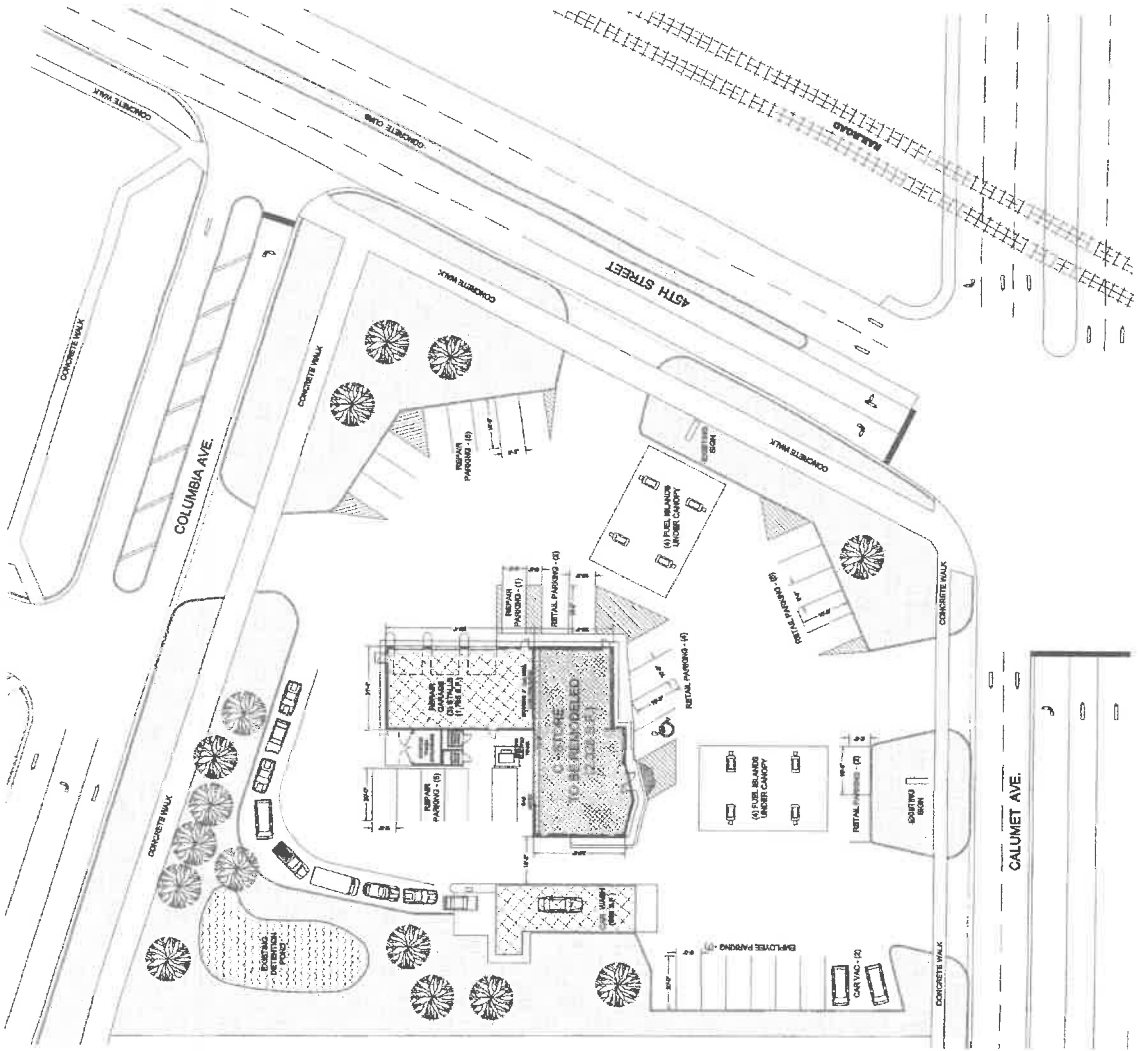
ADDITIONALLY

7 EMPLOYEE PARKING HAVE BEEN PROVIDED
 TOTAL NUMBER OF PARKING SPACES PROVIDED = 34 SPACES

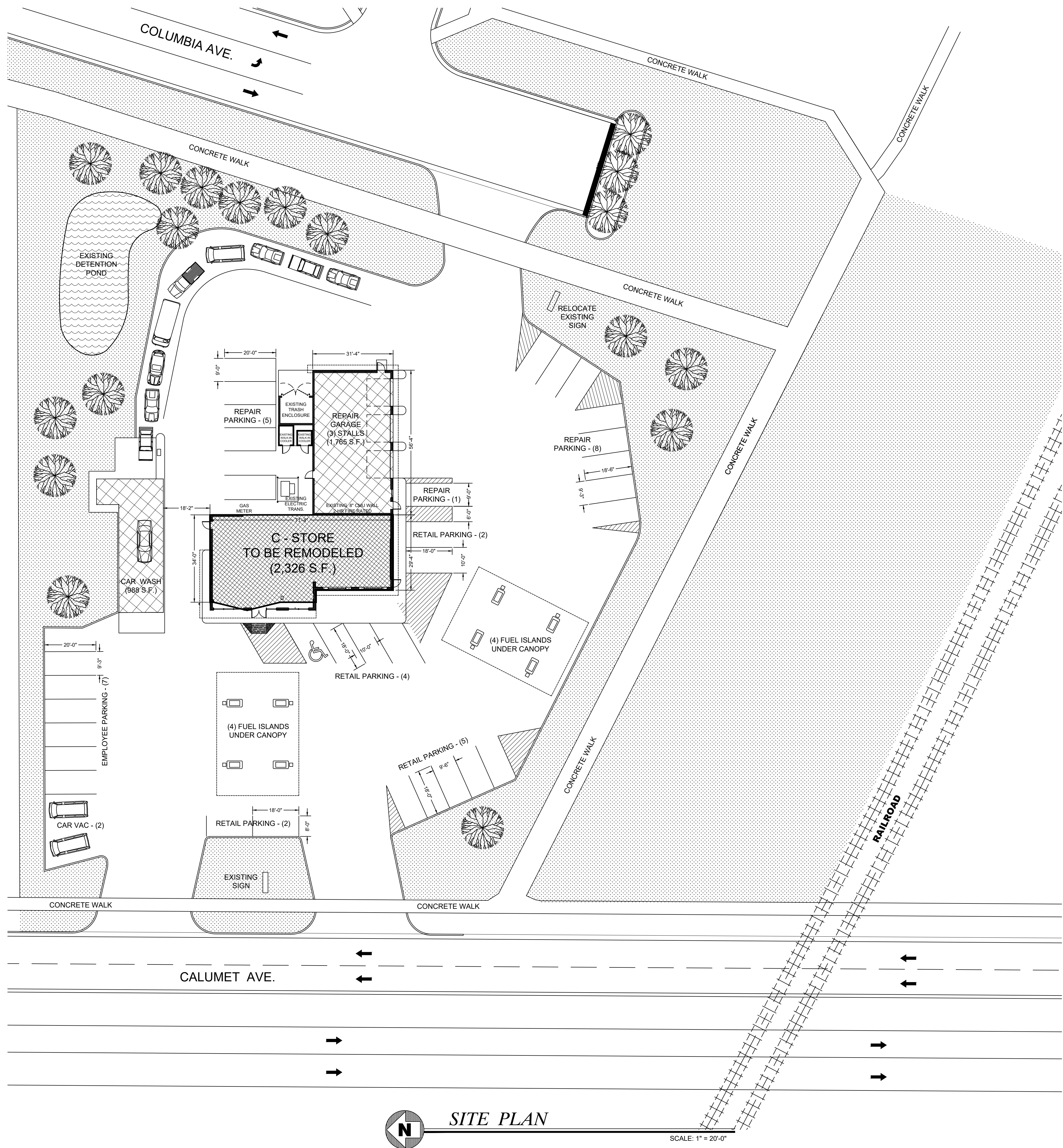
REQUIRED HANDICAPPED PARKING = 1 SPACE AS PROVIDED
 AUTO CAR WASH = EXISTS UNCHANGED



Know what's below.
 Call before you dig.



SITE PLAN
 SCALE 1"=32'



SITE PLAN

SCALE: 1" = 20'-0"

PARKING CALCULATIONS

SERVICE STATION = 5 SPACES / 1000 S.F. BUILDING AREA
 = 1/200 x 1,765 S.F. = 9 SPACES REQUIRED
 14 REPAIR PARKING SPACES PROVIDED

RETAIL = 4.5 SPACES / 1000 S.F. BUILDING AREA
 = 4.5/1000 x 2,326 = 10 SPACES REQUIRED
 13 RETAIL PARKING SPACES PROVIDED

ADDITIONALLY

7 EMPLOYEE PARKING HAVE BEEN PROVIDED

TOTAL NUMBER OF PARKING SPACES PROVIDED
 = 34 SPACES

REQUIRED HANDICAPPED PARKING = 1 SPACE AS PROVIDED

AUTO CAR WASH = EXISTS UNCHANGED



Know what's below.
Call before you dig.

revisions	date	scale	drawn by	checked by
	06/28/21	AS SHOWN	R.J.E.	H.L.M.
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Holly L. Mohler



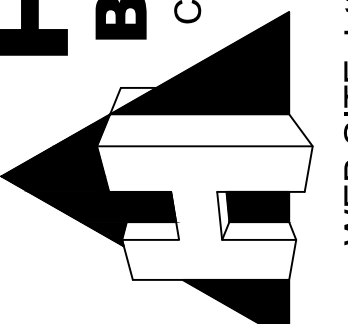
A Professional Corporation
 Architects - Engineers - Interior Designers
 435 South State Street, Suite 1000
 Indianapolis, Indiana 46202
 Phone: (765) 742-2432 / Fax: (765) 987-5099
 Email: hlm@hmlm.com / Web Site: www.hmlm.com

project no. 32-081

REMODEL OF C-STORE
GOOD OIL COMPANY
9451 CALUMET AVE.
MUNSTER, INDIANA 46321

SITE PLAN

HAMSTRA BUILDERS, INC.
 CONTRACTORS & DEVELOPERS
 1228 NORTH 200 WEST - WHEATFIELD INDIANA 46392
 PHONE: (219) 956-3111 - FAX: (219) 956-3570
 WEB SITE: <http://www.hamstragroup.com>



C01

EXHIBIT B
MUNSTER BOARD OF ZONING APPEALS
MINUTES OF REGULAR BUSINESS MEETING
Meeting Date: June 8, 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: 6:47 pm

Pledge of Allegiance

Members in Attendance:

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

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

Preliminary Hearings

- a. **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 reported that the applicant is requesting a public hearing for the application. He said the applicant is requesting multiple variances. He said the project has received variances in May of 2020 to reduce the required off-street parking to 31 spaces, from the minimum front setback, and the minimum front planting strip. The project was not approved by the Plan Commission and it was withdrawn in July 2020. A few months later the project was resubmitted, with a new set of required variances: from the side setback – the maximum is 24 feet, applicant is proposing a 77 foot setback – from the frontage buildout - the minimum is 80%, applicant is proposing approximately 39% - the location of the entrance – the requirement is that it be on the front of the building, applicant is proposing it to be on the side of the building – location of off street parking – the requirement is the 3rd lot layer, applicant is proposing parking in the 2nd lot layer – and the location of the required street screen – the requirement is that it be coplanar to the façade, applicant is proposing that it would be located at the sidewalk.

Mr. John Reed stated that he represents the project applicant. He said the project has been delayed. He said the proposed tenants for the building are Little Italy to-go with no seating and a Domino's delivery/carryout. He said the prior variance granted for parking will limit them to 77 seating position

and they are proposing around 8. He said he would like to meet the criteria for the variance and receive development approval. He said they are requesting a public hearing at the next meeting.

Mr. Raffin asked whether parking in the 2nd lot layer could cause a safety issue with cars backing out and pulling in the same area. Mr. Reed said that he would revise the plan to push back those spots into the 3rd lot layer so they don't intrude on ingress and egress. Ms. Mayer asked if there would be less parking spaces then. Mr. Reed said that is the only option. He said they don't need the additional spaces because they are proposing carryout. Ms. Mayer asked if the building position would remain. Mr. Reed said that it would. Mr. Raffin said that he does not want to see a detention pond on this lot and said that they should install underground detention. Mr. Reed said that the building is only 2500 square feet, and the hardscape hasn't changed that much so there is not that much detention. He said they can only spend so much money on a building is only 2500 square feet. Mr. Raffin said he would not support a pond on Ridge Road. Mr. Reed said it would not be visible from Ridge Road since it's located on the northwest corner of the property. Mr. Reed said it will be visible from the train passengers. Mr. Don Torrenga said the landscaping plan is showing that there will be landscaping around the detention pond which grow up around the pond so it will not be visible from the train. He said it will be a grassed area that will be no more than 2.5 to 3 feet deep. He said the entire area is all sand so it should work fine. He said underground detention would add 20% to the cost of the project which doesn't seem reasonable.

Motion: Mr. Buksa moved to schedule a public hearing for BZA 21-002.

Second: Mr. Petersen

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

- b. 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.**
- c. 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 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 associated with the proposal. The first is an application for a conditional use permit. He said a car wash is considered an auto oriented use, which is a conditional use in the CD-4.A district. He said that the accessory building was a car wash in the past but was converted into a wheel alignment bay and the car wash use was abandoned for over a year, which means the conditional use permit has lapsed. He said the 965 square foot accessory building is the proposed car wash. 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 façade of the principal building. He said that a conditional use is permitted under certain conditions which are listed in the staff report. He said the BZA must hold a public hearing, decide whether the conditions have been met, and make a recommendation to the Town Council. Mr. Vander Woude described the site plan. He said that the site has a substantial amount of stacking space for cars and sufficient access to the site. He said they are not proposing any other improvements to the site.

Mr. Justin Schramm introduced himself as the corporate attorney for the Good Oil Company and Chuck Ryan the Chief Operating Officer. He said that they had presented this application to the Town's Site Plan Review Committee and discussed the basics of the site. He said the setback is approximately 22

inches short of the required setback. He said they recognize that Calumet Avenue has been improved and wants to be partners with the Town to ensure that the site is cosmetically pleasing. He said that he understands that some fencing needs to be installed, the signage on the building needs to be changed. He said that he has verified that the oil separator is functional and up to code. He said they would like to return the car wash to its use as a car wash. He said in the past there has been some unsightly use of the property. Mr. Petersen asked if the rendering was up to date. Mr. Vander Woude said that the site plan was submitted to the Town in connection with this application but was originally approved by the Town some years ago as part of an overall development plan. Mr. Petersen said that without an accurate rendering, the board would not be able to act on the request. Mr. Schramm said that the building and the pertinent part of the site was still in place but can understand how an accurate rendering of the 45th Street access would help their analysis. Mr. Ryan said that he didn't think the application was affected by the 45th Street closure but they can submit an accurate rendering. He said they are trying to understand if the business will be feasible, and the car wash is integral to that. Mr. Friedman asked if the intention was to operate the car wash and sell gas. Mr. Ryan said it was. Mr. Petersen asked if they are planning to tear down the facility and rebuild. Mr. Petersen asked if that is what they are planning, they should submit an accurate rendering of their final plans. Mr. Ryan said they are in a contractual agreement with a lessee that has four years on the contract. He said they need to figure out if the lessee can survive there with or without a car wash. Mr. Petersen asked why the lessee is not submitting the application. He said that the lessee has rights to possession, and they will be responsible for constructing and maintaining the car wash, so they should be at the hearing. Mr. Schramm said that privity is with the site owner; he said the code contemplates the owner making the application. He said they can ask the lessee to participate in the process but does not believe that it would be legally required. Mr. Petersen said that the owner is making representations on behalf of the site operator, and they are involved in the process. He asked whether the applicant is making the request to gauge whether this site will meet their long-term objectives and the site operator has no intention to operate the car wash. He asked whether the applicant is willing to make commitments on behalf of the tenant. Mr. Ryan said they are. Mr. Friedman suggested the applicant provide an affidavit from the tenant stating they are authorized to speak on behalf of the tenant. Mr. Wickland suggested that they provide a copy of the lease. Mr. Schramm said he would need to seek authorization from the executive committee of Good Oil to provide that. Mr. Schramm said that there is a provision in their lease that states that the owner would seek approval for the car wash. Ms. Mayer asked how long the tenant has been operating the station. Mr. Ryan said that the site has been operational since February. Mr. Ryan said that since they signed the lease, Good Oil has done everything that has been asked of them. He said they can step in and maintain property. Ms. Mayer asked whether the lease was contingent upon the opening of the car wash. Mr. Ryan said it was not. Ms. Mayer said that they can manage without an updated rendering. She said that the abandoned curb cut on 45th should be removed and landscaped. Mr. Raffin said that he sat on the board in 2013 when they updated the site. He said that the site has been an eyesore on Calumet Avenue with weeds, dead landscaping, and other issues. He said that he would like to see a commitment that the property would be maintained. Mr. Schramm suggested that the board could approve a one- or two-year grant of the conditional use to make sure the property is maintained. He said they are interested in doing better in maintaining the site. Mr. Raffin asked whether they would consider taking down the accessory structure if the conditional use is not extended. Mr. Schramm said he can take that back to the executive committee. Mr. Ryan said they are willing to improve the property. Mr. Vander Woude said that the Town staff had prevented the gas station from reopening until certain property maintenance issues had been resolved and the company had followed through. Mr. Friedman asked whether they are permitted to place a time frame on the conditional use. Mr.

Wickland said they can require commitments, but he would have to look at the law to determine whether a time frame is a legal commitment.

Motion: Mr. Buksa moved to schedule public hearings for BZA 21-004 and 21-007 contingent upon an affidavit of representation or the presence of the lessees at the public hearing, a copy of the lease, and an updated rendering.

Second: Mr. Petersen

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

- d. BZA 21-005 Parth Patel requesting approval of a conditional use permit for a drive through at a proposed Smoothie King at 8130-8138 Calumet Avenue.**
- e. BZA 21-006 Parth Patel requesting variances from the minimum parking ratio and the maximum number of curb cuts to develop a Smoothie King at 8130-8138 Calumet Avenue.**
- f. BZA 21-008 Parth Patel requesting approval of a conditional use permit for an outdoor dining patio at a proposed Smoothie King at 8130-8138 Calumet Avenue.**

Mr. Vander Woude said that there are three actions requested in connection with the development of 8130-8138 Calumet Ave. He said that the proposal is to consolidate two lots and construct a Smoothie King with a drive through and parking lot. He said the applicant is requesting a conditional use for a drive through, a conditional use for outdoor dining, and variances from the minimum parking requirement and the maximum number of curb cuts. He said that there are currently two vacant buildings on the subject properties. He said both properties are owned by Bruce Boyer. The applicant is the developer Parth Patel. He said there is a proposed exit to the south along a town-owned alley way to 30th street. He said there is also an easement along the south edge of the property: ten feet on the subject property and ten feet on the property to the south for a shared driveway. He said the variance is being requested for two curb cuts, where only one is permitted and they are requesting a variance for 13 spaces and 24 are required. He said the applicant has provided additional information from other stores which provides evidence that fewer parking spaces are needed because most customers will be using the drive through. Mr. Vander Woude said that there is another request for an outdoor dining special use for a patio in the front of the building which will have some seating but will not have any service. Mr. Vander Woude said each petition will require a public hearing.

Mr. Patel said the southern curb cut is usually only used as an exit to Calumet which is how they are proposing for it to be used. He said they will not use the exit along the alley to the south. He said that the code required parking based on interior square footage of 1375 so they only need 23 and they are proposing 14 total stalls including the ADA space. He said they are adding the patio to meet the frontage requirement and he said they tried to reorient the building to keep cars and pedestrians separate. He said the main reason for the conditional use for the drive through is that drive throughs typically generate 20% more sales, and they are estimating their cost to be \$1.8 million so to meet that debt service they would need additional volume from the drive through.

Mr. Raffin said that he has big concerns about having a drive through. He worries about stacking on Calumet Avenue during busy times. He said that the Dairy Queen drive through routinely backs up onto Ridge Road during busy times. He said that he also doesn't want to see additional curb cuts that limit pedestrian access and cause traffic hazards on Calumet Avenue. He said the restaurants across the street are successful without a drive through. Mr. Patel said that they are adding a second menu board to service guests more quickly and prevent back up stacking on to Calumet Avenue. He said that they are

leaving a 30-foot clearance to allow for maneuvering in and out of parking spaces even if the drive through is backed up. Mr. Patel said that his drive through concept is different from the Dairy Queen. Mr. Raffin asked how many of his restaurants have drive throughs. Mr. Patel said he has seven Smoothie Kings, and none have drive throughs. He said that he knows a franchisee in Yorkville that just constructed a drive through, and he is using his assumptions and that restaurant is number three in sales. Ms. Mayer said that the drive through could work on a corner, but she cannot support it in this location. Mr. Friedman said that he is sympathetic to the need to make a profit, but they have had difficult experiences with a Dunkin Donuts drive through in a tight location on Calumet.

Motion: Mr. Raffin moved to schedule public hearings for BZA 21-005, 21-006, and 21-008.

Second: Mr. Petersen

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

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 petitioner had a scheduling conflict and is unable to attend the meeting but plans to appear at the July meeting and therefore have requested a continuance. Mr. Raffin said that he would hope they could get the project done this year if approved. Ms. Mayer asked if truck traffic has been reduced. Mr. Vander Woude said he hasn't seen the numbers, but anecdotally it appears that their changes have had a positive effect. Ms. Mayer asked whether they can require them to implement the project within 60 days. Mr. Vander Woude said that the zoning code gives applicants a year to implement a project. Ms. Mayer suggested that we encourage them to complete the project prior to the holidays.

Motion: Mr. Buksa moved to table BZA 20-012 to the July meeting contingent on this being the last continuance granted.

Second: Ms. Mayer.

Discussion: None.

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

Findings of Fact

- a. **BZA 21-001 ICU Sign Solutions, LLC on behalf of Mark C and Elizabeth A Demakas H&W, requesting approval of variances from TABLE 26-6.701.B MONUMENT SIGN SPECIFIC STANDARDS and SECTION 26-6.701.B.5.t to permit a cabinet-type monument sign that is greater than 18 square feet.**

Motion: Mr. Buksa moved to approve the findings of fact for BZA 21-001.

Second: Mr. Petersen.

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

Additional Business/Items for Discussion

Mr. Vander Woude reported that the Governor’s order declaring a public health emergency was extended to the end of June, but he anticipates that the Governor will let it expire soon. He said he expects the Town Council to adopt a policy for virtual meetings that will be in accordance with state law. He said he will provide that information to the members.

Next Meeting: Mr. Freidman announced that the next regular business meeting will be July 13, 2021, at 6:45 p.m.

Adjournment:

Motion: Mr. Petersen moved to adjourn.

Second: Mr. Raffin.

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

Meeting adjourned at 8:06 p.m.

Chairman Stuart Friedman
Board of Zoning Appeals

Date of Approval

Executive Secretary Thomas Vander Woude
Board of Zoning Appeals

Date of Approval

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

**TOWN OF MUNSTER
MINUTES OF A REGULAR MEETING OF THE TOWN COUNCIL
AUGUST 16, 2021**

A regular meeting of the Munster Town Council convened at 7:00 p.m. on Monday, August 16, 2021. At the time of this meeting, the country was facing a pandemic outbreak of the Coronavirus. In response, Indiana Governor Holcomb issued a series of Executive Orders which, among other things, declared a public health emergency and suspended various statutes. Executive Order 20-04 specifically addressed public meetings and the Open-Door Law. This Executive Order, along with the opinion of the Indiana Public Access Counselor, allows for meetings to be held in a virtual environment. Subsequent Executive Orders have extended this practice.

The announced meeting location was Munster Town Hall. Councilors, Staff, and the public had the option to participate via Zoom meeting technology. Councilors Chuck Gardiner, Andy Koultourides, Lee Ann Mellon, Ken Schoon and Steven Tulowitzki were physically present at Town Hall. President Koultourides presided.

Also present in Town Hall were Clerk-Treasurer Wendy Mis, Controller Patricia Abbott, Town Manager Dustin Anderson, Town Attorney Dave Westland, Police Lieutenant Daymon Johnston, Deputy Fire Chief Dave Strbjak, Planning Director Thomas Vander Woude, and Munster Representative to the Hammond Sanitary District Mike Hawkins was present in the virtual setting. The news media were not represented. The public was given the information needed to access the meeting virtually, and some took advantage of it.

Also in attendance at Town Hall was Munster Boy Scout Troop 542 which was present as part of their Citizenship Badge.

The Town Council has sought legal counsel and has performed its due diligence to the best of its ability in a continually changing situation. The Town Council believes it is acting in accordance with Indiana State law, the Governor's Executive Orders, and the interpretations and directives of other State agencies.

President Koultourides opened the meeting with a moment of silence followed by the pledge of allegiance.

PUBLIC COMMENT

Because of the unique nature of this meeting, the Town of Munster accepted public comment submitted both in-person and electronically. The public was informed, via the agenda posted at munster.org, that questions or comments about an item on the agenda were to be emailed to danderson@munster.org. Mr. Anderson reported that none were received.

Mr. Bob Thomas, 8445 Manor Avenue, was present in the virtual setting and had questions about the planned train station. This matter was discussed at length later in the meeting.

No one else rose to claim the floor.

CONSENT AGENDA

APPROVAL OF MINUTES

Approval of the minutes of the regular meeting held on August 2, 2021

ACCOUNTS PAYABLE VOUCHER REGISTERS

Confirmation of Voucher Register #21-5Q dated 05/31/21 totaling \$3,538.93
Confirmation of Voucher Register #21-6O dated 06/04/21 totaling \$66.37
Confirmation of Voucher Register #21-6P dated 06/30/21 totaling \$2,412,505.06
Confirmation of Voucher Register #21-8B dated 08/05/21 totaling \$496,410.74
Confirmation of Voucher Register #21-8C dated 08/10/21 totaling \$56,208.51
Confirmation of Voucher Register #21-8D dated 08/10/21 totaling \$27,821.38
Approval of Voucher Register #21-8E dated 08/16/21 totaling \$91,446.28
Confirmation of Voucher Register #21-8F dated 08/12/21 totaling \$33,839.38
Confirmation of Voucher Register #21-8G dated 08/13/21 totaling \$418,254.28

SPECIAL WATER ADJUSTMENT

The Town has been performing work on Timrick Drive including the installation of new water mains. The water line of a customer in the area was compromised when the boring contractor severed the customer's water line. There was sludge in the line after the incident and the customer was required to run their water to be sure the lines were clear. The homeowner has requested a refund for the cost of the water used to clear the line.

The Clerk-Treasurer does not have the authority to grant a refund or credit in this situation. It is difficult at best to determine how much water was used in this situation. If Council were to grant the request, a fair method of determining the amount to refund must be established.

One method of determining the amount is to apply the Leak Adjustment Policy. This looks at the average usage over the previous twelve months. The average usage for this customer is 4,000 gallons/month and the period in question had 12,000 gallons. The original bill amounts totaled \$46.01. Under this method, the adjustment amount would be \$15.05 which represents water usage and sales tax. With the adjustment, the amount due for water and tax would be \$30.96.

Councilor Schoon moved, with a second by Councilor Tulowitzki, to suspend the rules, waive the readings, and adopt the Consent Agenda as presented. Councilors Schoon, Mellon, Gardiner, Tulowitzki, and Koultourides voted in favor; none voted against. The motion carried and the Consent Agenda was adopted.

NEW BUSINESS

CHANGE ORDER #031: GRADE SEPARATION PROJECT

The Grade Separation Project included the construction of retaining walls at each corner of the underpass. The retaining walls had an architectural surface treatment and anti-graffiti coating. Following the completion of Wall 4, a vehicle struck the retaining wall causing surface damage. The accident was not reported so there was no insurance information available to the contractor to seek damages. INDOT provides payment for damaged property where insurance information is not available. The sum of the change order includes manpower and materials to repair the wall including paint and anti-graffiti coating. In addition, the work required two additional days be added to the Contract Completion Date. DLZ Engineer Lee Randell was present in the virtual setting to explain the various change orders and to answer questions.

The total cost of Change Order #031 is \$3,245.41 and an extension to the Contract Completion Date of two days. This represents 0.016% of the original contract price. The total changes to-date are \$1,876,332.78 or an 9.136% increase to the total project cost. The TIF Allocation Fund will cover the change order. The change order has been reviewed and approved by the Town's construction engineering firm DLZ as well as INDOT.

Councilor asked if similar accidents in the future will be covered by insurance. Mr. Anderson responded only if an incident report is filed.

Councilor Gardiner moved, with a second by Councilor Tulowitzki, to approve Change Order #031 for INDOT Contract B-36229 in the amount of \$3,245.41 and a Contract Completion Date extension of two days. Councilors Schoon, Mellon, Gardiner, Tulowitzki, and Koultourides voted in favor; none voted against.

ORDINANCE 1831: AMENDMENT #3 TO 2021 SALARY ORDINANCE

Proposed ORDINANCE 1831 is AMENDMENT #3 TO THE 2021 SALARY ORDINANCE. In response to the Coronavirus pandemic, AIM Medical Trust, the healthcare provider for the Town of Munster employees, is offering a one-time payment for fully vaccinated employees covered by the Town medical insurance policy. The one-time payment will not exceed \$50.00 for each employee. The COVID-19 reimbursement fund of the AIM Medical Trust will cover the costs.

In addition, the Town will provide reimbursement to all full-time employees not covered under the AIM Medical Trust, firefighters, and regular part-time employees, by utilizing monies provided from a second source of the AIM Medical Trust. These reimbursements will be covered by the wellness credit from the AIM Medical Trust. Seasonal employees, Town Councilors, members of Boards and Commissions, and police pensioners will be exempt from the one-time payment.

Staff would like to begin processing reimbursements swiftly and requested Ordinance 1831 be adopted on first reading.

Councilor Tulowitzki moved, with a second by Councilor Mellon, to suspend the rules, waive the readings, and adopt Ordinance 1831 on first reading as presented. Councilors Schoon, Mellon, Gardiner, Tulowitzki, and Koultourides voted in favor; none voted against.

CONTRACT APPROVAL: INDOT/LPA BIKE AND PEDESTRIAN TRAIL CONNECTOR AT CADY DITCH AND MARSH DITCH

The Town has been awarded a grant of up to \$784,080.00 in federal funds through NIRPC to extend bike and pedestrian access across Hart Ditch and Cady Marsh Ditch to Brantwood Park in Highland. This is an 80% matching grant with the Town covering 20% of the funding.

The initial estimate is \$1.2M with a 20% contingency plus construction engineering estimated at 15% or \$216,000.00 bringing the estimated cost up to \$1,656,000.00. Federal funds will cover \$784,080 with the Town being responsible for \$871,920.00. Funds from prior Park Bond Proceeds are available to cover this cost.

The layout of the path has been finalized and permits for construction in the floodway have been submitted to the Indiana Department of Natural Resources. Geotechnical engineering will begin in the coming weeks and construction plans will be finalized once geotechnical engineering is complete. Construction is currently schedule for September 2022.

Council approved a contract with SEH for the initial engineering work at the October 19, 2020, meeting. An LPA Contract has been prepared with the Indiana Department of Transportation for the construction.

In response to questions from Councilors Gardiner, Schoon and Tulowitzki, Mr. Anderson stated the final completion date is unknown; there is a verbal understanding which will be reduced to writing with the Town of Highland that they will contribute to the local match; the contribution of the Town of Highland will not impact the federal share and that NIRPC awards points and expects the sharing of costs between local units.

Councilor Gardiner moved, with a second by Councilor Tulowitzki, authorize the Town Manager to execute the LPA contract #54249 with the Indiana Department of Transportation for the construction of a pedestrian bridge over Hart and Cady Marsh Ditches. Councilors Schoon, Mellon, Gardiner, Tulowitzki, and Koultourides voted in favor; none voted against.

PROPOSAL: TOWN HALL GENERATOR

SEH has submitted a proposal to upgrade the existing standby generator system to the Town Hall facility. Three separate tasks were outlined in the proposal dated July 27, 2021, covering Design Services, Bidding Phase Services, and Construction Inspection. The three tasks will be completed for a not to exceed amount of \$26,600.00.

Additional work was proposed for completion at additional cost. The project schedule calls for bid documents to be ready by the end of September.

Councilor Tulowitzki asked for a rough cost estimate. SEH Engineer Jill DiTommaso was present and explained she could not state with certainty but anticipated it to be in the half million-dollar range.

In answer to Councilor Gardiner, Ms. DiTommaso stated the current system is at least twenty years old but does not know the exact age.

Councilor Gardiner moved, with a second by Councilor Mellon, to authorize the Town Manager to enter an agreement on behalf of the Town for the scope of services provided in the proposal at a cost not to exceed \$26,600.00. Councilors Schoon, Mellon, Gardiner, Tulowitzki, and Koultourides voted in favor; none voted against.

CONDITIONAL USE PERMIT: 9451 CALUMET AVENUE

The Marathon gas station located at 9451 Calumet Avenue is owned by Good Oil who has requested a conditional use permit to use an existing accessory structure as a car wash. The Board of Zoning Appeals held a public hearing on July 13, 2021 and voted to forward a favorable recommendation for approval with conditions to Council. The conditions are as follows.

1. The car wash is to be located in the existing accessory building.
2. The car wash is to be an accessory to the existing Marathon gas station.
3. The car wash queuing is to be screened in accordance with Munster zoning ordinance Table 26-6.405.A-6.
4. The BZA approves a variance from setback standards of Table 26-6.405.A-6.
5. The permit be granted with a time limit of twelve months.
6. If the conditional use permit is not renewed after a year, and they don't have a plan, the accessory building be vacated, taken down, and restored to landscaping or parking.

Lengthy discussion ensued. It was observed that the business is in an important location in Town. The petitioner has been granted variances in the past and not followed through with the promises made. It would be legally difficult to not allow the continued conditional use permit once granted.

Councilor Mellon moved, with a second by Councilor Gardiner, to deny the conditional use permit for a car wash. Councilors Schoon, Mellon, Gardiner, Tulowitzki, and Koultourides voted in favor; none voted against. The conditional use permit was denied.

PARK RULES AND REGULATIONS

At the direction of the Park Board, the Park Director has been developing new park rules with corresponding fines for their violation. The Police Department has contributed to the project and the comments were passed to the Town Attorney for review. The Town Attorney has worked with Councilor Gardiner and Staff towards codifying the new rules. A public hearing is required.

Councilor Gardiner stated that the rules have so much changed as have been brought into line with the current ordinances to allow enforcement. He thanked Town Attorney Nicole Bennett for her work.

Councilor Tulowitzki sought clarification on some of the items.

Councilor Gardiner moved, with a second by Councilor Schoon, to accept the draft rule changes and set a public hearing and potential adoption of the rules at the September 20, 2021, meeting. Councilors Schoon, Mellon, Gardiner, Tulowitzki, and Koultourides voted in favor; none voted against.

REPORTS

STATION DESIGN UPDATE

CDM Smith provided a presentation with options for the train stations. This matter was a follow-up the to the presentation from the August 2, 2021, meeting.

ANNOUNCEMENTS

(Unless stated otherwise, all meetings of the Town Council begin at 7:00 p.m. at the Munster Town Hall.)
The number of residents able to participate in person will be limited based on the Governor's Executive Order(s) in effect at that time.

The Town Council will hold a regular meeting on Monday, September 20, 2021. The Redevelopment Commission will hold a regular meeting immediately following the Town Council meeting. There will be no meeting on Monday, September 6, 2021, and Town Hall will be closed, in observance of Labor Day.

ADJOURNMENT

There being no further business to come before the Council, and upon a motion by Councilor Gardiner and seconded by Councilor Tulowitzki, the meeting adjourned at 8:33 p.m. by voice vote.

ATTEST:

Andy Koultourides, President

Wendy Mis, Clerk-Treasurer

STATE OF INDIANA)	SUPERIOR
)	IN THE LAKE CIRCUIT COURT
COUNTY OF LAKE)	SS:
)	ANNUAL TERM 2021
GOOD OIL COMPANY, INC.)	CAUSE NO. 45CO1-2109-PL-_____
Petitioner,)	
v.)	
)	
THE TOWN OF MUNSTER, INDIANA,)	
THE TOWN OF MUNSTER, INDIANA)	
CLERK-TREASURER, and THE)	
INCORPORATED TOWN OF)	
MUNSTER, INDIANA BOARD OF)	
ZONING APPEALS)	
Respondents.)	

VERIFIED PETITION FOR JUDICIAL REVIEW

Comes now the Petitioner, Good Oil Company, Inc., by Counsel, Justin A. Schramm of Schramm Law Group, P.C., and for their Verified Petition for Judicial Review, alleges and says as follows:

1. Petitioner, Good Oil Company, Inc., is an Indiana domestic for-profit corporation, with its principal office being located at 1201 N. US 35, Winamac, IN 46996.
2. Respondent, The Town of Munster, Indiana, is an incorporated Indiana municipal corporation, validly formed and existing under the laws of the State of Indiana (the “**Town**”). The Town Council for the Town of Munster, Indiana, is a duly elected board, responsible for various Town functions (the “**Town Council**”).
3. Respondent, The Town of Munster, Indiana, Board of Zoning Appeals, is an Indiana zoning board, formed pursuant to Ind. Code § 36-7 et seq., and a municipal commission, organized by the Town (the “**Board of Zoning**”).
4. That Petitioner is the current owner of that certain piece of real property located at 9451 Calumet Ave, Munster, IN, containing parcel number 45-07-30-301-004.000-027 (the “**Property**”), and has been the continuous owner of said Property since April of 2011.
5. That, in addition to the Property being used as a gas station and convenience store for the entirety of Petitioner’s ownership of said Property, and until 2013, Petitioner also utilized

the Nine Hundred and Sixty-Five (965) Square Foot Accessory Building (the “**Accessory Building**”) located on the Property for a Car Wash.

6. That the Accessory Building still stands on the Property, it being located approximately Eighteen Feet and Two Inches (18’2”) from the convenience store.
7. That, due to the Accessory Building not being utilized as a Car Wash for a period of at least one (1) year, the Town required the Petitioner to seek a conditional use permit for the Accessory Building’s re-use as a Car Wash, as a car wash was now deemed a non-conforming use, pursuant to the Town’s zoning ordinance.
8. That, in addition to the conditional use permit, the Town also required Petitioner to apply for a developmental standards variance, as the building’s setback of Eighteen Feet and Two Inches (18’2”) was closer than the minimum Twenty Feet (20’) setback now required pursuant to the Town’s zoning ordinance.
9. That both the Car Wash’s use, and its current setback, were in compliance with the Town’s zoning ordinance at the time the Car Wash was installed, and the Accessory Building was built on the Property.
10. That the Town’s zoning ordinance amendments, which were made subsequent to the construction of the Accessory Building, and its use as a Car Wash, made the minimum setback requirement and the Accessory Building’s use as a car wash non-conforming.
11. That on or about May 6, 2021, Petitioner submitted its Site Plan Review Application, a copy of which is attached hereto as **Exhibit A**, and incorporated herein by reference.
12. That, after a meeting with the Site Plan Commission on or about May 13, 2021, the Site Plan Commission did not indicate any problems or issues with the Petitioner’s proposed conditional use as a Car Wash, or the minimum setback requirements for the Accessory Building.
13. That on or about May 26, 2021, Petitioner submitted its Petition Application for a Variance, pertaining to the minimum Twenty Foot (20’) setback variance, and re-submitted its Petitioner Application for a Conditional Use Permit, requesting to re-use the Accessory Building as a Car Wash (together, collectively, the “**Permits**”). Petitioner’s Application for a Variance is attached hereto as **Exhibit B**, and incorporated herein by reference. Petitioner’s Application for a Conditional Use Permit, is attached hereto as **Exhibit C**, and incorporated herein by reference.
14. That Petitioner complied with all notice requirements, as set forth in Ind. Code § 36-7 et seq., having published notice of the Board of Zoning hearings in a county paper of acceptable circulation, and also having provided certified mailings to all property owners identified by the Town, as having an interest in the Board of Zoning hearings.

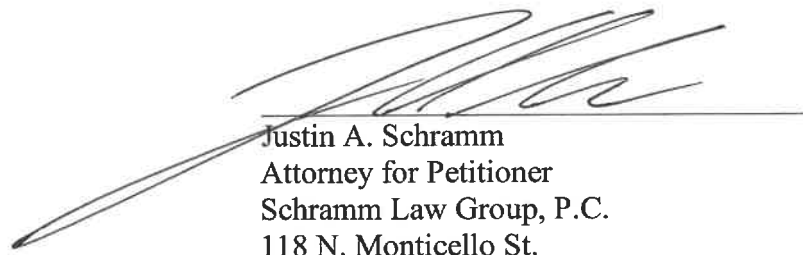
15. Petitioner met with the Board of Zoning in two (2) public meetings, those meetings taking place on or about June 8, 2021, and July 13, 2021.
16. That prior to the July 13, 2021, public hearing, two (2) staff reports were submitted to the Board of Zoning, recommending approval of the Permits, with conditions. A copy of the Conditional Use Permit Staff Report is attached hereto as **Exhibit D**, and incorporated herein by reference. A copy of the Development Standards Variance Conditional Use Permit Staff Report is attached hereto as **Exhibit E**, and incorporated herein by reference.
17. That a public hearing that was held by the Board of Zoning on or about July 13, 2021, and the Board of Zoning, in a 4-1 vote, granted the Permits, subject to the Town Council's subsequent approval.
18. That various pieces of evidence were considered at both Board of Zoning hearings, including the Site Plan Report, both Staff Reports, maps, and oral testimony.
19. That the Board of Zoning asked questions during both meetings, which were open to the public.
20. That no additional comment was received by any interested landowners, all of whom received notice from the Petitioner via certified mailings and newspaper publication.
21. That the Board of Zoning issued Findings of Fact, which were certified and presented to the Town Council, for subsequent approval. A copy of the Findings of Fact are attached hereto as **Exhibit F**, and incorporated herein by reference.
22. A copy of the minutes of the July 13, 2021 hearing are attached hereto as **Exhibit G**, and incorporated herein by reference.
23. That the Town Council, at their August 16, 2021 public meeting, with Exhibit A, B, C, D, E, F, and G, in hand and available for inspection, denied the Permits, by unanimous vote.
24. That the Town Council failed to properly evaluate the Permits under the appropriate standards, as set forth in Ind. Code § 36-7-4-918.4 and Ind. Code § 36-7-4-918.5, and did not take into consideration the confines of said Code sections.
25. That, among other non-permitted evaluative standards, the Town Council discussed the aesthetic nature of the Property, as their sole basis for denial of the Permits.
26. That one (1) Council member in particular, that being Councilmember Mellon, referred to the Property as "looking like junk" and referred to Petitioner's offer to revitalize the Property in the Board of Zoning meeting as disingenuous.
27. That reference to the Property as a whole was made by the Councilmembers during deliberation, and not specifically to the Accessory Building which housed the Car Wash. No further discussion was offered concerning the Accessory Building, as any comment

made specifically targeted the whole of the Property and the Petitioner's motives for seeking to re-use the Car Wash Accessory Building.

28. That no conditional use or other variance is required to continue to operate the Property as a gas station and convenience store, and therefore Councilmember Mellon's comments inappropriately targeted the whole of the Property, and not the specific Accessory Building which was the subject of the Permits.
29. That the Town Council neither presented nor received any additional evidence pertaining to the Property or the Accessory Building at their August 16, 2021, public meeting, aside from those items attached hereto as Exhibit A, B, C, D, E, F, and G, which would otherwise support their denial of the Permits, under those specific standards allowed pursuant to Ind. Code § 36-7-4-918.4 and Ind. Code § 36-7-4-918.5.
30. That the Town Council's denial of the Permits was not in accordance to those standards promulgated and set forth and allowed pursuant to Ind. Code § 36-7-4-918.4 and Ind. Code § 36-7-4-918.5, or any other section of the Code.
31. Petitioners have exhausted all administrative remedies and are entitled to file this Petition pursuant to Ind. Code § 36-7-4-1604.
32. This Verified Petition was filed within Thirty (30) days of the Town Council's denial of the Permits and was timely filed.
33. Petitioners are prejudiced by the Town Council Decision, which decision is: (i) arbitrary and capricious; (ii) unsupported by substantial evidence; (iii) not in accordance with the law; (iv) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; and (v) without observance of procedure required by law.
34. Pursuant to Ind. Code § 36-7-4-1613(a), Petitioners hereby request the Town Council to prepare the original or certified copy of the Town Council's record for judicial review and to deliver the same to Petitioner's Counsel so that Petitioners can transmit the Town Council record to the Court within Thirty (30) days after filing this Verified Petition. If the Town Council fails to timely transmit the Town Council's record to Petitioner's Counsel, Petitioner reserves the right to request an extension of time to file the zoning record with the Court.
35. Petitioner has complied with the notice provisions of Ind. Code § 36-7-4-1609 by having notice served by either Sheriff or by certified mail, return receipt requested, on:
 - (a) The Town of Munster's Clerk-Treasurer;
 - (b) The Town of Munster's Corporate Attorney, Mr. David Westland, of Westland & Bennett P.C.;
 - (c) Board of Zoning Appeals.

WHEREFORE, Petitioner, by Counsel, Justin A. Schramm of Schramm Law Group, P.C., respectfully requests that the Court grant this Verified Petition for Judicial Review, reverse the Town Council's decision, and enter an Order granting the Petitioner's Application for a Conditional Use Permit and Petitioner's Application for a Variance, and for all other relief that is just and proper in the premises.

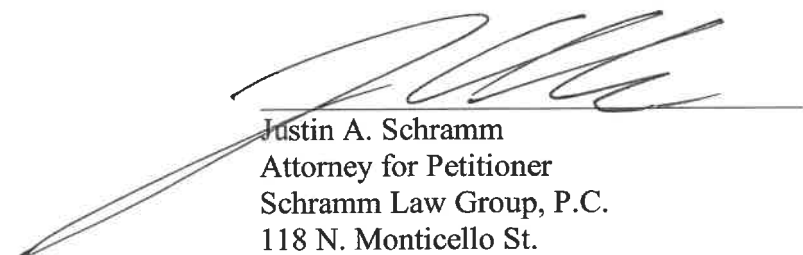
Respectfully Submitted,



Justin A. Schramm
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Winamac, IN 46996
(574) 946-6850
schrammlawgrouppc@gmail.com
Attorney No. 32749-09

I affirm under the penalties for perjury, that the foregoing statements of fact are true and correct.

Respectfully Submitted,



Justin A. Schramm
Attorney for Petitioner
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118 N. Monticello St.
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schrammlawgrouppc@gmail.com
Attorney No. 32749-09

EXHIBIT GUIDE

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STATE OF INDIANA

) IN THE LAKE SUPERIOR COURT, CIVIL DIVISION 1

COUNTY OF LAKE

)
) CASE NUMBER: 45D01-2109-PL-000661

GOOD OIL COMPANY, INC.

Filed in Open Court
January 31, 2022

v.

Lorenzo Arredondo

TOWN OF MUNSTER, ET AL

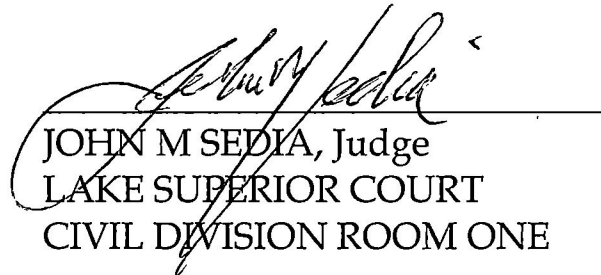
CLERK LAKE SUPERIOR COURT
NG

INTERIM CASE MANAGEMENT ORDER

Plaintiff appeared by Attorney Justin Schramm; defendant appeared by Attorney David Westland for hearing on the plaintiff's and defendant's Motions to Dismiss.

The Court, being fully advised, now orders this case dismissed with prejudice.

DATED: January 31, 2022



JOHN M SEDIA, Judge
LAKE SUPERIOR COURT
CIVIL DIVISION ROOM ONE