

MINUTES OF THE REGULAR MEETING OF THE
BOARD OF ZONING APPEALS
TUESDAY, DECEMBER 14, 2010

The Michigan City Board of Zoning appeals met in a regular meeting in the Common Council Chambers, City Hall Building, 100 East Michigan Boulevard, Michigan City, Indiana, on *Tuesday, December 14, 2010*, at the time, date and location for holding of said meeting.

A pre-meeting was held by the Board at 6:30 p.m. in the Planning Department's conference room, first floor, City Hall Offices.

Chairman Przybylinski called the meeting to order, and upon roll call, the following answered present:

Don Przybylinski, Al Whitlow, John Morse, Tom Wilson and Wallace Hook;

Also present: Steven A. Hale, Counsel for the BZA; Joe Siegel, Zoning Administrator; and, Marilyn M. Jones, court reporter.

The next item of business was approval of the minutes from the *Tuesday, November 9, 2010*, meeting. It was moved and seconded that the minutes be approved.

With a voice vote of three ayes no nays, motion carried, and the minutes were approved.

The first item of business:

Chairman Przybylinski called for the first petition.

Petition B-107-10 of Tara Sue Farish (Hearthside Foods) for special use approval for development of an accessory off-site employee parking lot and bulk and development standard variance approval to locate the parking area in a required front yard adjoining a street in the 4100 Block of south Ohio Street, across the street from the existing baking company - Attorney Jon A Schmaltz.

Counsel Jon Schmaltz approached the lectern and introduced himself and advised the Board that he has Power of Attorney to speak on behalf of the owner this evening -- Counsel Hale confirms receipt of the paperwork for Power of Attorney. Counsel Schmaltz proceeded to explain the purchase of the property for the parking lot, the plans for ingress and egress, lighting, sidewalk and crosswalk plans -- displays a large site plan to the board -- the Special Use Permit was also discussed in this presentation, explaining the setbacks and right-of-way issues.

Mr. Morse queried regarding the existing garage. Counsel Schmaltz explained that the garage exists as a non-conforming use by the owner of the parcel which the garage exists on to the north; that there is no agreement to

purchase this parcel; but that the property owner did receive notice of the petition and the hearing this evening.

Mr. Morse questioned the crosswalk plans, special lighting, and voiced his concern of somebody possibly getting "run over". Counsel Schmaltz deferred to Robert Palm to contribute to the discussion, and advised the board that the Petitioner would consider doing and responding to the requests of the Board of Works, if they had a concern about lighting; making note of safety issues.

Chairman Przybylinski queried about how many cars will be in this parking lot, and the response was "65".

Mr. Hook asked further questions on lighting and pontificated that he walks in this area in the mornings and that it is "very" dark in this area, and that lighting would probably be necessary. Also went on to question the plans for landscaping the parking lot.

Further discussion ensued regarding the sidewalk, water runoff and environmental impact studies -- Robert Palm from Palm & Associates addressed the water runoff issues. Discussion also ensued regarding the issue of the crosswalk, placement thereof and safety thereof.

There being no further questions or discussion from the board, the public portion of the meeting was opened.

There being no public comments, public portion of the meeting was closed.

Mr. Siegel read departmental reports into the record (H.I.).

Counsel Hale addressed the board by stating the petition is in proper order, that the Petitioner's required notices are in order, and that the power of attorney is on file; Counsel Hale also pointed the Board to Section 160.126C and 160.124B4Q.

Chairman Przybylinski asked if the Petitioner wished to summarize, and Counsel Schmaltz briefly summarized the request on behalf of his client, Tara Sue Farish. Lighting on the pedestrian walkway was once again discussed.

Mr. Wilson moved that the board approve Petition B-107-10 for special use approval for development of an accessory off-site employee parking lot and bulk and development standard variance approval to locate the parking area in a required front yard adjoining a street in the 4100 Block of South Ohio Street and across the street from the existing baking company.

Mr. Hook asked Mr. Wilson to amend his motion to include the last paragraph of the report, that the Petitioner will receive approval from the Board of Public Works & Safety for the marked crosswalk on the street pavement,

pedestrian crossing signs for worker safety as requested by the MCPD Traffic Division.

Mr. Wilson so amended his motion to include receiving approval from the Board of Public Works & Safety for a marked crosswalk on the street pavement and pedestrian crossing signs for worker safety, as per the request of the MCPD Traffic Division.

Mr. Hook seconds the amended motion.

Roll call vote was taken as follows:

AYE
Mr. Przybylinski
Mr. Whitlow
Mr. Morse
Mr. Hook
Mr. Wilson

NAY

With a voice vote of all ayes and no nays, motion carried and Petition B-107-10 is hereby approved.

The next item of business on the agenda:

Petition B-108-10 of Dawn Story for a use variance for operation of a beauty shop in an existing business building at 701 East Barker Avenue, and a bulk and development standard variance for relief from parking standards.

Petitioner approaches the lectern and requests the Board to grant a continuance. Continuance granted, and Petition B-108-10 will be placed on the agenda for the January, 2011, meeting.

The next item of business on the agenda:

Petition B-109-10 of Thomas Moss for a use variance and bulk and development standard variance to relocate a residential development advertising sign from Washington Park Boulevard/Liberty Trail to a vacant parcel of land at the northeast corner of Spring Street/Michigan Boulevard in a B-2 District.

Mr. Moss approaches the lectern and introduces himself to the board, explained that his advertising sign that is now located on the Vitamins, Inc. property needs to be moved; the sign advertises his development.

Board members questioned Mr. Moss, noting that this is only for his sign, not other signs. Discussion ensued regarding moving the existing sign.

There being no further questions or discussion from the board, the public portion of the meeting was opened.

Pat Boy questioned the words "Michigan Boulevard", and wondered whether this was a typographical error. Board Member Wilson explained the fact that Michigan Boulevard is at this location, as is the newspaper building next door. Ms. Boy said she understood, and thanked Mr. Wilson.

There being no public comments, public portion of the meeting was closed.

Mr. Siegel read departmental reports into the record (H.I.).

Counsel Hale commented that if the board is going to grant Mr. Moss's petition, that a time limit needs to be set and that the time limit should be made part of the motion. That approval should also be conditioned on Mr. Moss providing the board with the newspaper publisher's affidavit, which shows that newspaper publication has been made, notifying the public of tonight's hearing on two separate occasions and at the appropriate times. Counsel Hale noted that Mr. Moss has provided him with proof that this will be done, but to make the board's records complete, Mr. Moss will provide the documentation.

Mr. Moss summarized by stating he wants permission to move the temporary sign from Liberty Trail & U.S. 12 to the location of U.S. 12 & Michigan Boulevard/Spring Street for the three-year period. Mr. Moss reconfirmed that he will get the publisher's affidavit to Mr. Hale "tomorrow".

Mr. Wilson questioned the "Bridges" sign.

Mr. Whitlow made a motion to approve Petition B-109-10 of Thomas Moss for a use variance and bulk and development standard variance to relocate a residential development advertising sign from Washington Park Boulevard/Liberty Trail to a vacant parcel of land at the northeast corner of Michigan Boulevard/Spring Street, in a B-2 District, and that the sign be permitted for a temporary period of time not to exceed three years; that Mr. Moss present to the Plan Department as soon as possible documents indicating that the advertising took place in the MC News-Dispatch as required.

Mr. Hook seconds the motion.

Roll call vote was taken as follows:

AYE
Mr. Przybylinski
Mr. Whitlow
Mr. Morse

NAY

AYE
Mr. Hook
Mr. Wilson

NAY

With a voice vote of all ayes and no nays, motion carried and Petition B-109-10 is hereby approved.

The next item on the agenda was old business.

Counsel Hale presented Findings & Orders for the November 9, 2010, meeting:

First set of Findings and Order: Larry & Nannette Dombkowski, Petition B-105-10.

Mr. Siegel read findings into the record (H.I.).

Mr. Whitlow moved that the Findings & Order be approved as presented to the board. Seconded by Mr. Hook.

AYE
Mr. Przybylinski
Mr. Whitlow
Mr. Morse
Mr. Wilson
Mr. Hook

NAY

With a voice vote of all ayes and no nays, motion carried and Findings & Order for November 9, 2010, Petition B-105-10 Dombkowski are hereby approved.

Counsel Hale presented Findings & Orders for the November 9, 2010, meeting:

Next set of findings presented, Jean A. Laurent, Petition B-106-10.

Mr. Siegel read findings into the record (H.I.).

Mr. Whitlow moved that the Findings & Order be approved as presented to the board. Seconded by Mr. Wilson.

AYE

**Mr. Przybylinski
Mr. Whitlow
Mr. Morse
Mr. Wilson
Mr. Hook**

NAY

With a voice vote of all ayes and no nays, motion **carried and Findings & Order for November 9, 2010, Petition B-106-10 Laurent are hereby approved.**

No new business.

**Chairman Przybylinski called for public comment.
There being no public comment, the public portion of the meeting was closed.**

There being no further business to come before the board, the meeting was adjourned.

A handwritten signature in cursive script, appearing to read "Allan Whitlow", written over a horizontal line.

Board Secretary

**REPORT ON THE PETITION OF
TARA SUE FARISH (HEARTHSIDE FOODS) – B-107-10**

WATER DEPARTMENT

R. E. Russell, Superintendent, had no objections.

SANITATION DEPARTMENT

Al Walus, General Manager, had no objections.

FIRE DEPARTMENT

Kyle Kazmierzak, Fire Marshal, had no recommendations at this time.

TRAFFIC DIVISION

Lt. Jeff Loniewski, Traffic Division Commander, stated that due to the volume of traffic on this roadway, it is recommended that a crosswalk be established to warn motorists of pedestrians crossing between the east and west sides of Ohio Street. Furthermore, it is believed that a crosswalk would aid in directing pedestrians where to cross the roadway so that pedestrians are not crossing at multiple points.

Therefore, based on the documents presented for inspection, the Traffic Division has no objections to this request as long as approval is sought from the Michigan City Board of Public Works and Safety for the installation of pavement markings and signage establishing a pedestrian crosswalk across Ohio Street.

PLANNING DEPARTMENT

The Petitioner is requesting Special Use approval for development of an accessory off-site employee parking lot in the 4100 block of south Ohio Street across the street from the existing baking company as well as bulk and development standard variance approval to locate the parking area in a required front yard adjoining a street.

Board members will note that Chapter 160.052(A)(107) of the Zoning Ordinance which allows parking lots in a B-2 zoning district with Special Use approval subject to 160.053 Special condition #2 – The special use may be permitted where the owner satisfactorily establishes that there will be no appreciable traffic congestion or hazard to pedestrian safety and that 160.090(G) of the Zoning Ordinance allows parking in any yard except a front yard adjoining a street (B-2 district requires at 25' front yard which Petitioner requires relief from).

The additional parking is necessitated by factory expansion to the west side of the baking company requiring the relocation of existing employee parking as well as to accommodate future needs.

The department would offer an affirmative recommendation for approval subject to the findings and orders, privacy screening or dense landscaping along the south property line adjoining the residential zoning as well as Petitioner receiving approval from the Board of Public Works and Safety for a marked crosswalk on the street pavement and pedestrian crossing signs for worker safety as per the request from the Police Traffic Division.

**PETITION RECOMMENDATIONS
PLANNING DEPARTMENT**

PETITION NO. B-107-10

PETITIONER: Tara Sue Farish

REQUEST: Special Use

LOCATION: 4100 block of Ohio Street

Planning Department Observations:

Request Special Use approval for development of an accessory employee parking lot in the 4100 block of Ohio Street.

Please submit your comments and/or recommendations to our office by 11/24/10.

Date Forwarded: 11/16/10

Attorney's Observations:

Date Received:

Date Forwarded:

RETURN TO: PLANNING DEPARTMENT

Petition No. B-107-10
Tara Sue Farish
Attorney's Report

Initially, Petitioner seeks approval of a special use. Petitioner wishes to use a vacant lot across the street from a factory for a parking lot for the factory employees. The existing employee parking lot will be used for factory expansion, and this necessitates use of the property in question. The proposed parking lot property is zoned B-2. As an appropriate special use in a B-2 zoning district, Petitioner cites §160.052(A)(107) as the pertinent section of the Zoning Ordinance:

160.052 (A)

B 2

(107) Parking lots and storage garages:

S 2

Thus, parking lots are an appropriate special use in a B-2 District with the requirement of special condition 2 per §160.052(A)(107). If the BZA determines that this is a permitted special use, the BZA should make a finding as to the special condition that must be met, namely under §160.052(A)(107) of the Zoning Ordinance the BZA should determine that the following is met:

160.053

2. "The special use may be permitted where the owner satisfactorily establishes that there will be no appreciable traffic congestion or hazard to pedestrian safety."

Finally, if the special condition is met, the BZA should require the Petitioner to show that the requirements for a special use found in Section 160.126(C) of the Zoning Ordinance are met, namely:

- (1) The special use being requested is specified in this chapter as a permissible special use within the zoning district which is applicable to the property in question.
- (2) The establishment, maintenance, or operation of the special use will not be detrimental to or endanger the public health, safety, morals, comfort, or general welfare.
- (3) The special use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purpose already permitted, nor substantially diminish or impair property values within the neighborhood.
- (4) The establishment of the special use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.
- (5) Adequate utilities, access roads, drainage, or other necessary site improvements have been or are being provided.

- (6) Adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets.
- (7) Conformance to special conditions outlined in the chapter for the use being requested.

It is recommended that the Petitioner adequately address the above requirements. The BZA can require Petitioner to comply with provisions that the BZA considers necessary to protect the public health, safety and welfare. See §160.009(C)(2) of the Zoning Ordinance.

Because the proposed new employee parking lot will replace an existing employee parking lot, there may be no increase in vehicular use and presence in the area. What is new is that these employees will have to cross the street whereas they did not when using the existing lot. The BZA may want to consider the report of the Michigan City Police Department Traffic Division regarding installation of a cross walk.

Next, the Petitioner is requesting approval of a plan that will utilize the entire lot as a parking lot, including the front yard. Therefore, Petitioner is requesting a development standard various to permit off-street parking spaces, open to the sky, in the front yard. Petitioner seeks relief from Section 160.090(G) which provides:

(G) *In yards.* Off-street parking spaces, open to the sky, may be located in any yard except a front yard and a side yard adjoining a street.

The standards for a development standard variance are found in Section 160.124(B)(4)(q) of the Zoning Ordinance:

- (1) The approval will not be injurious to the public health, safety, morals, and general welfare of the community;
- (2) The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner; and,
- (3) The strict application of the terms of the Zoning Ordinance will result in practical difficulties in the use of the property.

The BZA may want to consider the provisions of Section 160.090(H), especially the requirements for screening and lighting.

The Petitioner should provide very specific and detailed information concerning the standards described above, as well as the need, if any, for a cross walk, and also any proposed screening and proposed lighting.

The submitted materials include the Petition, and 2 pages (large, blueprint size) survey and engineering specifications (in great detail) for the proposed employee parking lot.

**REPORT ON THE PETITION OF
DAWN STORY B-108-10**

SANITATION DEPARTMENT

Al Walus, General Manager, had no objections.

WATER DEPARTMENT

R. E. Russell, Superintendent, had no objections.

PLANNING DEPARTMENT

The Petitioner is requesting a use variance for operation of a beauty shop in an existing business building at 701 E. Barker Avenue as well as a bulk and development standard variance for relief from parking standards. Further, that Chapter 160.090(K)(4)(d) is applicable in that beauty shops require one (1) parking space for each 200 square feet of floor area and one (1) space for each employee (presently the building has used available street parking to serve parking needs).

Board members will note that the building has been in existence for many years and used as offices and/or shops. Present zoning of the property is Residential-2 and said building is not conducive to residential dwelling use.

Operation of the beauty shop appears to be an appropriate use and the department would recommend approval subject to findings and orders, explanation of parking arrangements in reference to total number of employees and clients on the premises.

*Note: (Petitioner and property owner are presently in discussions with a business property to the west for a shared parking arrangement.)

**PETITION RECOMMENDATIONS
PLANNING DEPARTMENT**

PETITION NO. B-108-10

PETITIONER: Dawn Story

REQUEST: Use Variance & Development Standard Variance

LOCATION: 701 E Barker Avenue

Planning Department Observations:

Request for Use Variance approval to operate a beauty shop in an existing building at 701 E Barker Avenue as well as a Development Standard Variance for parking relief.

Please submit your comments and/or recommendations to our office by 11/24/10.

Date Forwarded: 11/16/10

Attorney's Observations:

See Attached

Date Received: 4/15/09

Date Forwarded:

RETURN TO: PLANNING DEPARTMENT

Petition No. B-108-10
Dawn Story
Attorney's Report

Petitioner is seeking to operate a beauty salon and tanning center in a R2 residential district. A beauty parlor is not a permitted or special use in an R2 zoning district under Section 160.042 of the Zoning Ordinance. Petitioner is requesting a use variance under Section 160.124(B)(4)(p) of the Zoning Ordinance. The standards for a use variance under Section 160.124(B)(4)(p) are as follows:

1. The approval will not be injurious to the public health, safety, morals, and general welfare of the community.
2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner.
3. The need for the variance arises from some condition peculiar to the property involved.
4. The strict application of the terms of this chapter will constitute an unnecessary hardship if applied to the property for which the variance is sought.
5. The approval does not interfere substantially with the comprehensive plan.

It is significant to note that the building on this property is not suitable for residential purposes and has been used for a variety of business uses over the years.

Apparently the most recent business use was discontinued more than one (1) year ago, and therefore under Section 160.111(E) and (G)(2), the nonconforming business use is not "grandfathered" as a nonconforming but permitted (i.e. legal) use.

The BZA should request the Petitioner to detail the past use of the building and describe the building in sufficient detail to provide the BZA with an understanding of its potential uses.

Petitioner also requests a development standard variance from the off-street parking space requirements of Section 160.090(K)(4)(d), which requires 1 parking space for each 200 square feet of floor area for beauty parlors (up to 4 parking spaces for this building).

There is no room for off-street parking at all. Petitioner requests a variance from these requirements and proposes on-street parking along Elm Street.

The standards for a development standard variance found in Section 160.124(B)(4)(q) of the Zoning Ordinance are as follows:

- (1) The approval will not be injurious to the public health, safety, morals, and general welfare of the community;
- (2) The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner; and,
- (3) The strict application of the terms of the Zoning Ordinance will result in practical difficulties in the use of the property.

The Petitioner should provide sufficient information for the Board to determine if the use variance and development standard variance standards have been met.

The submitted materials include the Petition, a floor plan of the building showing dimensions, the location and nature of the equipment and the general structural components of the building, and a photograph of the building.

REPORT ON THE PETITION OF
THOMAS MOSS B-109-10

WATER DEPARTMENT

R. E. Russell, Superintendent, had no objections.

SANITATION DEPARTMENT

Al Walus, General Manager, had no objections.

FIRE DEPARTMENT

Kyle Kazmierzak, Fire Marshal, had no recommendations at this time.

PLANNING DEPARTMENT

The Petitioner is requesting a use variance as well as a bulk and development standard variance to relocate a residential development advertising sign from Washington Park Boulevard and Liberty Trail to a vacant parcel of land at the northeast corner of Spring Street and Michigan Boulevard. Said property is presently zoned Business-2.

Board members will note that the use variance is appropriate as advertising signs are not listed as a permitted or special use in the B-2 district and the bulk and development standard relief is necessary as the structure is not steel unipole construction and is less than 1000 feet from the nearest advertising sign.

This petition is an unusual request for a temporary sign location for a time period of a few years and is specific in nature to advertise Beachwalk development only and not to have changeable copy.

The department would recommend approval subject to findings and orders as well as the Board setting a specific timeline (3 years?) for removal/~~RELOCATION~~

Petition No. B-109-10
Thomas Moss
Attorney's Report

Petitioner proposes to place a Type "A" advertising sign on a vacant lot in a B2 zoning district. The sign is an existing sign which will be moved from its current location. A Type "A" advertising sign is not a permitted or special use in a B2 zoning district under Section 160.052 (A) (121) of the Zoning Ordinance. Petitioner is requesting a use variance under Section 160.124 (B) (4) (p) of the Zoning Ordinance. The standards for a use variance under Section 160.124 (B) (4) (p) are as follows:

1. The approval will not be injurious to the public health, safety, morals, and general welfare of the community.
2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner.
3. The need for the variance arises from some condition peculiar to the property involved.
4. The strict application of the terms of this chapter will constitute an unnecessary hardship if applied to the property for which the variance is sought.
5. The approval does not interfere substantially with the comprehensive plan.

Petitioner also requests a development standard variance from the requirements of Section 160.102 (Q) (1) and (2), which prohibit locating a type "A" advertising sign within 1000 feet of another such sign and require all type "A" advertising signs to be supported by a single steel pole and to be constructed totally of steel.

The BZA may want the Petitioner to discuss the distance between the proposed and existing signs (shown to be 775 feet in Petitioner's materials), the limited time Petitioner is seeking to have the proposed sign at this site and the history of any problems with this sign (it has been used at a different location for many years).

The standards for a development standard variance found in Section 160.124 (B) (4) (q) of the Zoning Ordinance are as follows:

- (1) The approval will not be injurious to the public health, safety, morals, and general welfare of the community;
- (2) The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner; and,

- (3) The strict application of the terms of the Zoning Ordinance will result in practical difficulties in the use of the property.

Petitioner has requested approval of the sign for a limited time. The BZA has the power to require the Petitioner to comply with provisions that the BZA considers necessary to protect the public health, safety and welfare. See §160.009(c). If a time limit for the sign is to be set it should be stated in any approval.

The Petitioner should provide sufficient information for the Board to determine if the use variance and development standard variance standards have been met.

The submitted materials include the Petition, a plat, showing the lot, various setbacks and the proposed location of the sign, two (2) photographs of the proposed sign at its current location, two photographs of the proposed new site for the sign (one showing the existing neighbor sign that is closer than 1000 feet), a survey by Thate Land Surveying Services LLC showing lot that is proposed new site for sign, location of sign and distance to nearest Type A advertising sign.

**MICHIGAN CITY BOARD OF ZONING APPEALS
FINDINGS AND ORDERS – DEVELOPMENT STANDARD VARIANCE**

The application of Larry & Nannette Dombkowski
Public Hearing on Findings and Decision held the 9th day of November, 2010
Public Hearing on Findings and Decision closed the 9th day of November, 2010
Findings and Orders Determined the 9th day of November, 2010

WE THE MEMBERS OF THE MICHIGAN CITY BOARD OF ZONING APPEALS NOW FIND:

1. That the Petitioner/Property Owner is Larry and Nannette Dombkowski, 412 E Coolspring Avenue, Michigan City, Indiana.
2. That the Petitioner is requesting a bulk and development standard variance from Chapter 160.015 of the Michigan City Comprehensive Zoning Ordinance to allow two (2) dwellings on one (1) lot, as well as relief from Chapter 160.013(D)(2)(a) to allow an accessory structure (dwelling above garage) to exceed one-story and exceed 15' in height.
3. That the proposed 2-story structure will measure 26'-8" wide x 34'0" long x 23'-5" high and contain a 2-car garage on the first level and an apartment on the second level.
4. That the apartment will be additional dwelling space for visiting family members and future use by aging relatives.
5. That Petitioner submitted the following exhibits to the Board: 1) site plan; 2) architectural working drawings of the proposed construction.

FURTHER, that preliminary findings as required for Development Standard Variance approval were submitted by petitioner and after review and discussion by the Board, a final determination is as follows:

- a) **That the Development Standard Variance requested in the petition will not be injurious to the public health, safety, morals, and general welfare of the community because of the facts as follows:** Public notice was made on August 27, 2010 and September 3, 2010 and certified letters were mailed on September 18, 2010 to all property owners abutting this site and across the rights-of-way. No neighbors have submitted any objections. The intended use is incidental to the dominant use of the premises and it conforms to the current use of the premises. The proposed accessory use and building conform in all ways to the regulations of the zoning district with the exception of the height limitation.

Adding a second dwelling unit would not be injurious to the public health, safety, morals, and general welfare of the community because multiple dwelling units are permitted in a single building in this zoning district as long as the lot has 3,000 or 5,000 total square feet. In this case, there is 33,000 square feet. Height of proposed garage is well below height restrictions for primary building. Lot is of

sufficient size to permit subdivision into 4-6 separate building sites. In addition, the proposed dwelling unit is for family members to use on a sporadic basis.

- b) **That the Development Standard Variance requested in the petition will not affect the use and value of the area adjacent to the property included in the variance in a substantially adverse manner because of the facts as follows:** No neighbors objected and we have a public building on an adjacent lot. The intended use conforms to the current use of the premises and there will be no adverse impacts on the use and value of the area adjacent to the property. The accessory building currently exists and is not within 10 feet of the principal dwelling and is more than 10 feet from all lot lines and does not cover more than 30% of the area of the rear yard. There currently is an accessory building in excess of 15 feet in height located at 416 E Coolspring Avenue. Given the large (33,000 sq. ft. – only 5,000 sq. ft. is required) size of the lot in question, there will be no adverse impact on neighbors.
- c) **That the Development Standard Variance requested in the petition, will by the strict application of the terms of the Zoning Ordinance, result in practical difficulties in the use of the property because of the facts as follows:** The existing zoning ordinance would not allow an accessory building with a height of 24 feet. It is our understanding that it is not a use of this building that is prohibited in our zoning district, but rather it is just an allergy-free accessory building that will be used sporadically and in ways consistent with the zoning regulations, that just happens to be taller than the zoning district allows.

Staff reports, attorney observations, and Petitioners' exhibits are all included as part of these formal findings and orders and are made part of the official minutes of record.

The BOARD NOW DECIDES that Petition B-105-10, BE AND IS HEREBY GRANTED based on the above listed findings.

Approved this 9th day of November, 2010, after proper notice and public hearing.

Donald Przybylinski, Chairman

Tom Wilson, Vice-Chairman

Al Whitlow, Secretary

John P. Morse, Member

G. Wallace Hook, Member

**MICHIGAN CITY BOARD OF ZONING APPEALS
FINDINGS AND ORDERS – DEVELOPMENT STANDARD VARIANCE**

The application of **Jean A. Laurent**

Public Hearing on Findings and Decision held the 9th day of November, 2010

Public Hearing on Findings and Decision closed the 9th day of November, 2010

Findings and Orders Determined the 9th day of November, 2010

WE THE MEMBERS OF THE MICHIGAN CITY BOARD OF ZONING APPEALS NOW FIND:

1. That the Petitioner/Property Owner is Jean A. Laurent, 308 Barker Road, Michigan City, Indiana.
2. That the Petitioner requested a bulk and development standard variance from Chapter 160.044(E)(1)(b) of the Michigan City Comprehensive Zoning Ordinance for approval to allow a building addition under construction to an existing residence at 308 Barker Road, Michigan City. Said addition encroaches approximately 3'-6" into a required side yard setback of 9' in the R-1 district.
3. That Petitioner filed for a building permit in April 2006 to make repairs from fire damage as well as a house addition to the rear of the existing residence which met side and rear yard setbacks.
4. That subsequent to the building addition, Petitioner began construction work on a separate side door entrance addition to the east side of the existing residence which violates the required 9' side yard setback as well as not having obtained building permits for the construction work.
5. That a violation ticket was issued on June 23, 2010 and heard in Superior Court #4 on September 1, 2010. Further that the Honorable Court held the matter in abeyance until receiving a final determination from the Michigan City Board of Zoning Appeals.
6. That Petitioner submitted the following exhibits to the Board: 1) site plan, xerox photos.

FURTHER, that preliminary findings as required for Development Standard Variance approval were submitted by petitioner, and after review and discussion by the Board, a final determination is as follows:

- a) **That the Development Standard Variance requested in the petition will not be injurious to the public health, safety, morals, and general welfare of the community because of the facts as follows:** The Board determined that Chapter 160.002(G) of the Zoning Ordinance is specific with intent of "providing controls (i.e. setbacks) over additions to and alterations and remodeling of existing buildings and structures. Allowing (or approving after the fact) zoning code violation, such as side yard setback violation as in this case, that are contrary to the plans and specifications presented for a building permit undermines the entire zoning process and therefore is injurious to public safety and general welfare.

- b) That the **Development Standard Variance** requested in the petition will not affect the use and value of the area adjacent to the property included in the variance in a substantially adverse manner because of the facts as follows: The Board determined that Chapter 160.002(b) of the Zoning Ordinance is specific with intent to protect neighboring properties by "regulating and determining the area of front, rear and side yards, courts, and other open spaces about such buildings. The Petitioner failed to show how the requested variance would not adversely affect use and value of neighboring and adjacent property.
- c) That the **Development Standard Variance** requested in the petition, will by the strict application of the terms of the Zoning Ordinance, result in practical difficulties in the use of the property because of the facts as follows: The Board determined that Petitioner began construction in violation of setbacks, without a valid building permit and doing so prior to petitioning the Board of Zoning Appeals created a self-induced hardship of practical difficulties in the use of the property. It was not the nature of the property and the required setbacks that resulted in practical difficulties, the property was perfectly functional before reconstruction started, but rather Petitioner's failure to conform to his building permit, that created the difficulty.

Staff reports, attorney observations, violation ticket, original valid building permit and drawings, as well as Petitioner's exhibits are all included as part of the formal findings and orders and made part of the official minutes of record.

The BOARD NOW DECIDES that Petition B-106-10, BE AND IS HEREBY DENIED based on the above listed findings and has ordered that the building construction in violation of Chapter 160.044(E)(1)(b) be removed on or before February 8, 2011.

Approved this 9th day of November, 2010, after proper notice and public hearing.

Donald Przybylinski, Chairman

Tom Wilson, Vice-Chairman

Al Whitlow, Secretary

John P. Morse, Member

G. Wallace Hook, Member