

**MINUTES OF THE REGULAR MEETING OF THE
MICHIGAN CITY BOARD OF ZONING APPEALS
TUESDAY, APRIL 13, 2021**

The Michigan City Board of Zoning Appeals met in a regular meeting via Zoom on **Tuesday, April 13, 2021**, at 6:00 p.m., the time, date and location for holding of said meeting.

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

Fred Klinder, Lester Norvell, Lawrence Zimmer, Karen Janus and Kathryn Stransky.

Also present: Counsel Steven A. Hale, Skyler York, Planning Director, Janelle Robinson, Court Reporter.

The first item of business was the approval of the minutes from the **Tuesday, March 9, 2021**, regular meeting.

Ms. Janus made a motion to approve the minutes of Tuesday March 9, 2021. Seconded by Mr. Klinder.

The roll call vote was taken as follows:

<u>AYE</u>	<u>NAY</u>
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Ms. Janus
Mr. Klinder
Mr. Norvell
Mr. Zimmer
Ms. Stransky

With a roll call vote of all ayes and no nays, motion **carried**, and the minutes were **approved**.

Chairman Zimmer requested that with the number of petitions on the agenda everyone be as precise and concise as possible, and explained that the Plan Department and Attorney's reports will be abbreviated, but attached to the minutes and available online. He then called for the first petition.

Mr. York first stated that he and Mr. Hale had reviewed the petitions and staff reports, but that Lilli Rosado will be presenting a summary of them.

Petition B-102-21, Jermaine Miller requesting Development Standards Variance to allow for installation of plumbing for sewer and water to use accessory structure for home occupation located at 214 Hobart Street. Represented by Attorney Richard Trainor. Continued from March.

Attorney Trainor introduced himself on behalf of Mr. Miller. He then went on to state that this is an R1D, that Mr. Miller wants to add plumbing to his accessory structure, a garage, for his home occupation of making sauce that he sells at his Cool Runnings restaurant. He also said he had included a floor plan of what's involved, that it would not create noise, smoke or odor, that he would comply with all requirements for home occupation and that the preliminary finding and order has been submitted.

Chairman Zimmer called for the departmental reports.

Ms. Rosado stated that the water department made a note that the owner will need to request a separate water service tap and service to supply the building, will need to provide a location for a meter and backflow device immediately following the meter as a commercial customer, and that no other departments made any comments. She then read an abbreviated summary of the departmental reports (H.I.) wherein the department recommended approval of the petition with the following conditions: One, structure may not be used as an accessory dwelling unit.

Attorney Hale confirmed that the notification documentation had all been received and they were free to proceed, gave a brief summary of the attorney's report (H.I.) and advised the board of their options, noting that there is one condition that the Planning Department asked to be considered and that should be made a specific part of any motion.

Chairman Zimmer asked if this would have to be inspected by the health department upon completion, to which Mr. York explained that they would have to pass his department's inspections first and then it would be inspected and approved by the health department.

With no further questions from the board Chairman Zimmer called for public comment.

With no public comment, Chairman Zimmer called for a motion.

Mr. Janus made a motion to adopt the findings of the Planning Department and approve the petition subject to the one condition. Seconded by Ms. Stransky.

The roll call vote was taken as follows:

<u>AYE</u>	<u>NAY</u>
Ms. Janus	
Mr. Klinder	
Mr. Norvell	
Mr. Zimmer	
Ms. Stransky	

With a roll call vote of all ayes and no nays, the motion was granted.

Petition B-103-21, Alan Schachtman Revocable Trust requesting Development Standards Variance from interior side yard minimum setback (eastern boundary) in an R1E Waterfront Residential District to allow construction of a small addition to a single-family residence on a non-conforming lot located at 1509 Lake Shore Drive. Represented by Attorney Barry F. McDonnell.

Mr. McDonnell introduced himself on behalf of Mr. Schachtman, who was also present for any questions. He described the property as a nearly 100-year-old two-story home according to the Beacon website, and that prior to Mr. Schachtman's ownership there was a small bump-out built onto the south side rear of the home, which is the location of the master bathroom. He went on to state that they are wanting to bump it out further to the south to create a master bathroom, with an art studio on the lower level that is currently a cement patio, that they would follow the same roof line and elevation, just extend the current bump-out. He further commented there would be no loss of green space or additional lot coverage, and that it would not impact the surrounding neighbors or neighborhood, making note of three adjoining neighbors who had expressed their approval of the plan, two by written letters and one by a phone call. He then further expressed that the initial bump-out was non-conforming and this will follow the same footprint of the home, just being an extension of the initial violating setback, which is the reason for the variance request for which they had submitted the proposed findings and order along with photographs and a site plan.

Chairman Zimmer called for the departmental reports.

Ms. Rosado stated there were no objections from departments, then noted that when she did this report it was done thinking that the impervious surface was going to change with the increasing square footage, but from what was just presented that's not going to be the case, and that if this is moved forward and they decide to do something else at the house impervious surface will have to be taken away. She then read an abbreviated summary of the departmental reports (H.I.) wherein the department recommended approval of the requested Development Standard Variance to fill an existing overhang, with condition of approval that condition may be constructed with an existing footprint of the home with decreased side yard setback. Under proposed findings two, the department recommended the Development Standard Variance to expand existing footprint of the home, which was in regard the impervious surface right now.

This was followed by an explanation regarding the impervious surface, stating that if they choose to do anything else at the property they would have to bring the impervious surface into compliance. There then was further discussion clarifying the impervious surface and what would be required.

Attorney Hale confirmed that the notification documentation had all been received and they were free to proceed. He then summarized the written letters by adjoining neighbors to the board, gave a brief summary of the attorney's report (H.I.) and advised the board of their options, noting that he wanted to make it clear this is a request to construct an enclosed structure within the existing footprint of the home under the existing overhang room, or deck. He then noted that there was a condition associated with that, and the findings support that if one includes proposed finding number one, as to the requirement that the strict application of the terms of the zoning ordinance would result in practical difficulties, or they could include Mr. McDonnell's proposed findings, or they were free to craft their own findings to support whatever motion is made.

There was then follow-up discussion between Attorney McDonnell, Mr. Schachtman, Attorney Hale, Mr. York and the board regarding the attached pictures and what their plans are.

With no further questions from the board Chairman Zimmer called for public comment.

With no public comment, Chairman Zimmer called for a motion.

With assistance from Attorney Hale, Mr. Klinder made a motion to adopt the Plan Department proposed findings under standard number one and standard number two, and proposed finding numeric one as to standard number three, and adopt the condition that is included in the recommendation of the Planning Department and approve the petition. Seconded by Ms. Janus.

The roll call vote was taken as follows:

AYE **NAY**

- Ms. Janus
- Mr. Klinder
- Mr. Norvell
- Mr. Zimmer
- Ms. Stransky

With a roll call vote of all ayes and no nays, the motion was granted.

Petitions B-104-21 through B-107-21: Colin Marshall requesting Development Standards Variance from setbacks in an R1E Waterfront Residential District to allow construction of a home located on Arndt Street, Lot 9, Lot 8, Lot 7 and Lot 6.

Colin Marshall started off by stating that in merging these petitions together, lots six, seven and eight are the exact same thing. He explained that these three lots are wider, with 50 feet in the front narrowing to 25 feet in the rear. Making reference to his submitted drawings he stated his goal is to build 24-foot modular homes on the lots, which he explained is the thinnest modular homes can be built in the factory and that he is limited to a rectangular home. He went on to say that the front meets the requirements, but would need the variance for the back, noting that per the fire department it is important to keep 10 feet between the houses. He also made mention of the 30 percent rule in an R1E, but that it doesn't apply to him due to where he is situated in relation to the dune.

He then described lot nine as being tough to build on and that with the way the private road going into it is structured the only way to have a garage is to request a front yard setback of 10 feet.

Chairman Zimmer called for the departmental reports.

Ms. Rosado stated that for Petition B-104-21 there were no objections from departments, then read an abbreviated summary of the departmental reports (H.I.) wherein the recommendation of the Planning Department was denial of the requested Development Standard Variance with no condition of approval.

Attorney Hale stated that his report was for all four petitions, B-104-21, B-105-21, B-106-21 and B-107-21. He confirmed that the notification documentation had all been received and they were free to proceed. He then noted that the report was only to lot nine and that it's not the same as the other three, and they should get some confirmation as to what the other reports say. He also advised that this is a Development Standards Variance, that they need to make specific findings given the recommendation and findings of the Planning Department, and that he feels these petitions should be voted on separately.

Chairman Zimmer called for questions from the board.

Mr. Klinder first clarified with Ms. Rosado that the recommendation was denial.

Chairman Zimmer suggested he consider replotting the four lots into three to give enough room to have modular houses with the proper setbacks. This was followed by Mr. York stating that other homes in the area were built meeting the requirements.

Ms. Stransky then brought up concerns with parking, with Mr. Marshall stating he plans to have walk-out basements with a garage. This was followed by further discussion between the board members and Mr. Marshall regarding the issues of street parking in the area.

There was then more in-depth communication with regard to the recommendation of denial and the reasons why, with Ms. Rosado, Mr. York and Mr. Marshall going over some changes that could be made and what some of the other options may be.

Attorney Hale then asked Mr. York if Mr. Marshall chose to incorporate or to change four lots into three, just moving interior lot lines, if this an administrative subdivision. This led to further conversation between Attorney Hale, Mr. York and Mr. Marshall regarding this option and the fact that he probably wouldn't have to come back before the board, but that requesting a continuance would be his best option.

Chairman Zimmer called for a motion to continue the four petitions.

Mr. Klinder made a motion to continue Petitions B-104-21, B-105-21, B-106-21 and B-107-21 to the next regularly scheduled meeting on May 11 at 6 p.m. via Zoom. Seconded by Mr. Norvell.

The roll call vote was taken as follows:

AYE _____ **NAY**

Ms. Janus
Mr. Klinder
Mr. Norvell
Mr. Zimmer
Ms. Stransky

With a roll call vote of all ayes and no nays, the motion was granted.

Petition B-108-21: Patrick & Marianne Grant requesting Development Standards Variance from the rear setback to allow construction of second story over attached garage area of an existing non-conforming residential home located at 302 Duneland Beach Drive.

Marianne Grant introduced herself and stated that they are seeking this variance to improve their home with this addition. She gave some background of her and her family owning and living in the home, saying they had outgrown it. She also commented that neighbors supported it and that a second story over the garage would mesh well in the neighborhood, and that they are requesting a variance for the rear setback in order to put a stairwell in the rear of the home.

Chairman Zimmer called for the departmental reports.

Ms. Rosado stated that for Petition B-108-21 there were no objections from departments, then read an abbreviated summary of the departmental reports (H.I.). Recommendation: Proposed finding one for the rear setback, department recommended denial of the requested Development Standards Variance to encroach into the rear with no condition of approval. Proposed finding number two for the front setback, no further encroachment into setbacks will be allowed, all other aspects, such as closets, additional floor space, et cetera, must be within the existing foundation of the home, and proposed staircase must not have any accessibility to the proposed addition from the exterior of the home.

Attorney Hale confirmed that the notification documentation had all been received and they were free to proceed, gave a brief summary of the attorney's report (H.I.) and advised the board of their options.

Chairman Zimmer called for questions from the board.

Mr. Klinder asked if there any other access internally to the upstairs over the garage, which was answered no. Mr. Grant explained that there is no second floor, so the only way to get up there would be to add the stairwell and that there's no way to put a staircase inside.

Chairman Zimmer then asked if they had considered building a second story within the existing parameters, which was followed by discussion of what all that would entail and how costly it would be.

Ms. Rosado followed up by explaining the existing setbacks and that they don't have enough information to know whether or not they would be able to meet the 10-foot requirement of the fire safety code.

Ms. Stransky asked if the location of the stairs was outside, to which Chairman Zimmer clarified the stairs would be accessed from inside the house.

With no further questions from the board Chairman Zimmer called for public comment.

With no public comment, Chairman Zimmer called for a motion.

With no further comment there was further discussion between the board members and the petitioners as to other ideas to try and make this work, with Chairman Zimmer eventually explaining they would need to go to their architect and have him work out a better plan for them.

Attorney Hale stated that any motion made should specify that it is relating to the front or the rear or any request for reduction in the setbacks. Mr. Klinder then clarified with him in regards to requesting a continuance based on a recommendation that they have their architect readjust it, or if they should deny it and have them resubmit it with the understanding that there will be problem with the front setback as long as it's not any greater than what it currently is, and they have to modify the rear setback.

Mr. York and the petitioners then further discussed what would be best for them to do at this point, coming to the general conclusion that going straight up without any additional encroachments going out into the setbacks would be best.

Mr. and Mrs. Grant requested a continuance to the next regularly scheduled meeting.

Mr. Klinder made a motion to continue Petition B-108-21 to the next regularly scheduled meeting on May 11 at 6 p.m. via Zoom. Seconded by Ms. Janus.

The roll call vote was taken as follows:

<u>AYE</u>	<u>NAY</u>
Ms. Janus	
Mr. Klinder	
Mr. Norvell	
Mr. Zimmer	
Ms. Stransky	

With a roll call vote of all ayes and no nays, the motion was granted.

Petition B-109-21: Michigan City Donuts, LLC requesting Special Exception Use to allow for drive-thru at Dunkin Donuts located at 1701 E. Michigan Boulevard.

Attorney Hale stated that he had an opportunity to review the notice documentation supplied by the petitioner, found that it does not meet the requirements, and expressed his strong recommendation was that this petition is not in a position to go forward and should not be considered. He followed this with a detailed explanation to the board of what his procedure is in verifying documentation and why he felt this way, emphasizing that with what he was provided he had no way of confirming that the adjoining neighbors had been notified. He then recommended that the petitioner request to continue this matter so that he can correct his deficiency in notice.

Jerry Hurckes, 7036 West 96th Street, Oak Lawn, Illinois, introduced himself and stated he was charged with doing that under Mr. Patel, the owner. He then said that he had given notification by both snail mail and certified mail, that every certification was done at the post office with the same address, so he gave copies of the envelope that was the snail mail and then gave you copies of the certifications from the post office. He also expressed he had sent Debbie the tracking numbers with the addresses and the people's names from the USPS at about 4:30

that afternoon, that the people had all gotten the certified mail, but they had not received any notifications back from the post office, and that having done the tracking four of seven received the certified mail, two of them had to be resent and one had to be forwarded.

This was followed with some back and forth as to the documentation received and why it was insufficient for them to be able to proceed with the petition.

Mr. Klinder made a motion to continue Petition B-109-21 to the next regularly scheduled meeting on May 11 at 6 p.m. via Zoom. Seconded by Ms. Stransky.

The roll call vote was taken as follows:

<u>AYE</u>	<u>NAY</u>
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Ms. Janus
Mr. Klinder
Mr. Norvell
Mr. Zimmer
Ms. Stransky

With a roll call vote of all ayes and no nays, the motion was granted.

Petition B-110-21: Next Modular/Tim Johnson requesting Development Standards Variance from the front yard setback to replace an existing home with a larger new home located at 1717 Lake Shore Drive.

Mr. Johnson greeted the board and stated that he was contacted by Mr. Morrison to build a new modular home. He gave a brief summary explaining that due to the sand grade in the rear it would require a large retaining wall in the back, so they are requesting an 18-yard front yard setback and to have an eight foot elevated deck for a lake view.

Chairman Zimmer asked how description of the plan jives with the drawings, to which Mr. Johnson answered it doesn't, that they had just come up with their new plan to include the deck, but that it stays within the 10 foot setback from the property line.

Chairman Zimmer called for the departmental reports.

Ms. Rosado read an abbreviated summary of the departmental reports (H.I.), wherein the department recommended approval of the petition with the following conditions: One, petitioner will comply with all other zoning requirements as per the municipal code.

Attorney Hale confirmed that the notification documentation had all been received and they were free to proceed. He first confirmed with Mr. Morrison that Mr. Johnson was speaking for him and had his authority to proceed with the request, then gave a brief summary of the attorney's report (H.I.) and advised the board of their options.

Chairman Zimmer inquired about their plans for parking. Mr. Johnson explained it would be similar to the neighbor's home, that they're going to have a concrete front pad projecting from Lake Shore to the structure, providing twice as much parking as there currently is, which was followed by discussion expressing this would be an improvement.

With no further questions from the board Chairman Zimmer called for public comment.

Colin Marshall, 1721 Lake Shore Drive, expressed his support of what Craig is trying to do and that this be a huge improvement for him.

With no further public comment Chairman Zimmer called for a motion.

Mr. Klinder made a motion to adopt the findings of the Planning Department and approve the petition subject to the one condition. Seconded by Mr. Norvell.

Upon starting roll call it was noted Ms. Janus had lost her connection.

The roll call vote was taken as follows:

<u>AYE</u>	<u>NAY</u>
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Mr. Klinder
Mr. Norvell
Mr. Zimmer
Ms. Stransky

With a roll call vote of four ayes and no nays, the motion was granted.

Petition B-111-21: Harbor and Lake, LLC requesting Use Variance to allow building in R1D District to be used as an office for real estate services located at 125 E. Barker Avenue.

Dudley Beyler introduced himself to the board and stated that he has the property under contract currently, subject to its Use Variance, then gave a brief summary of the building's history as Don's Barber Shop. He then stated he is requesting a variance to use the building as office space, that he does not plan to change the physical structure of the exterior of the building, also noting that it is in a residential area but that he would keep the same kind of hours of operation and traffic counts as the previous business had.

Chairman Zimmer called for the departmental reports.

Ms. Rosado read an abbreviated summary of the departmental reports (H.I.), wherein the department recommended approval of the petition with the following conditions: One, the use of real estate services will be permitted with no other uses permitted.

Attorney Hale confirmed that the notification documentation had all been received and they were free to proceed, then gave a brief summary of the attorney's report (H.I.) and advised the board of their options.

Mr. Beyler requested some clarity on the meaning of the condition if the building were ever to be used for a different type of office space. Attorney Hale stated had previously had discussions regarding this with Mr. York and Ms. Rosado, and that unfortunately it would have to come back before the board, but that the zoning ordinance would allow another request to change the use, and because the standards that would have to be met are the same, as long as the use was not more of an impact on the community he felt that such request would be received with similar results. This was followed with more conversation expressing that there are benefits to this, it would not be a vacant building and was a good thing.

Chairman Zimmer called for questions from the board.

Mr. Klinder asked if there would be a requirement to pave what is currently gravel for the parking. Mr. York stated that's hard when something has been there forever to go back on it, but that with it being open to the public and with ADA considerations he would have further conversation with Dudley to see if there is something they could work out regarding the gravel parking area.

Chairman Zimmer asked about making other outdoor cosmetic improvements, to which Mr. Beyler stated he had plans of modernization for the interior but his plans hadn't gotten as far as the exterior at that point. This was followed with Chairman Zimmer pointing out this is a residential area and to be mindful of not doing anything that would be intrusive to the neighboring area, primarily the lighting.

With no further questions from the board Chairman Zimmer called for public comment.

With no public comment, Chairman Zimmer called for a motion.

Mr. Norvell made a motion to adopt the finding of facts, the Planning Department's report, the attorney's reports and the petitioner's information, to approve petition B-111-21, to include the one condition. Seconded by Mr. Klinder.

The roll call vote was taken as follows:

<u>AYE</u>	<u>NAY</u>
Mr. Norvell	
Mr. Zimmer	
Ms. Janus	
Ms. Stransky	

With a roll call vote of four ayes and no nays, the motion was granted.

Petition B-112-21: Andrew Morrison requesting Special Exception Use to construct and operate a Take 5 Oil Change facility in a B2 District located on vacant land at the northeast corner of Highway 20 and Franklin Street, Parcel ID 460504353017000009.

Mr. Smith introduced himself as one of the petitioners, stating that he and Mr. Morrison are partners. He gave a description of their business, Take 5 Oil Change, as a drive through oil change where the customer stay in their vehicle for the duration of the service, then went on to describe the location as an undeveloped parcel. He explained that the reason for the Special Exception Use was their use was listed as such in the B2 zoning district. He then said he had worked with Skyler and Lilli to come up with a site plan and that there are a number of findings, but they are not detrimental to public health and safety. He further stated that they plan to meet all requirements in terms of drainage, architecture and everything else that goes with it, and commented on it being on a corner and that in terms of retail uses theirs would have significantly less impact than some other businesses.

Chairman Zimmer called for the departmental reports.

Ms. Rosado read an abbreviated summary of the departmental reports (H.I.), listing the eight standards in the ordinance this for Special Exception Use, wherein the department recommended approval of the petition with the following conditions: One, overhead doors must not face directly onto Franklin Street or U.S. Highway 20. Two, all of design guidelines as per zoning ordinance section 17 must be met. Three, compliance with zoning ordinance section 14.05(a).

This was followed with Mr. Smith asking for further clarification of what the conditions meant and Ms. Rosado explaining it to him.

Attorney Hale confirmed that the notification documentation had all been received and they were free to proceed, then gave a brief summary of the attorney's report (H.I.) and advised the board of their options.

Chairman Zimmer called for questions from the board.

Mr. Norvell initiated conversation of there being a Shell station on the property in the past, followed by Chairman Zimmer commenting on how well-kept the Burger King area is and that he hopes he is inspired by that and continues that kind of look and design and maintenance of the property, not only for the good of his business but for the good of the city.

With no further questions from the board Chairman Zimmer called for public comment.

With no public comment, Chairman Zimmer called for a motion.

Mr. Norvell made a motion to adopt the finding of facts, the Planning Department's report, the attorney's report, Mr. Smith's presentation, and to include the three conditions, the overhead doors and the two zoning conditions, and approve petition B-112-21. Seconded by Mr. Klinder.

The roll call vote was taken as follows:

<u>AYE</u>	<u>NAY</u>
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Mr. Klinder	
Mr. Norvell	
Mr. Zimmer	
Ms. Stransky	

With a roll call vote of four ayes and no nays, the motion was granted.

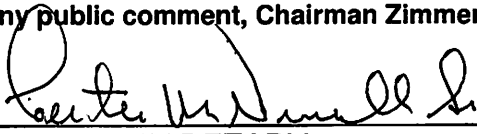
There being no Old Business Chairman Zimmer called for New Business.

Next item on the agenda is "New Business".

Chairman Zimmer commented as to how well they were able to get through 11 petitions in a timely manner, leading into a conversation of options on how to handle this in the future with the abundance of real estate sales and what's going on in the area, with a final comment of liking the abbreviated reports and limiting the length of a petitioner's presentation.

Chairman Zimmer called for public comment.

With no further comments from the board or any public comment, Chairman Zimmer adjourned the meeting.



 BOARD SECRETARY
 Vice - Chairman