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MINUTES OF THE REGULAR MEETING
OF THE
MICHIGAN CITY BOARD OF ZONING APPEALS
TUESDAY, OCTOBER 12, 2021

The Michigan City Board of Zoning Appeals met in a regular meeting in person, along with a live FaceBook and Zoom stream, on Tuesday, October 12, 2021, at 6:00 p.m, the date, time, and location for holding of said meeting.

Chairman Zimmer called the meeting to order and, upon roll call, the following board members are present:

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

Also present: Steven A. Hale, BZA Counsel; Skyler York, Planning Director; and, Marilyn M. Jones, RPR, CSR, the Board's stenographer.

The first item of business was approval of the minutes from the August 10, 2021, meeting. Motion was made and seconded to approve the minutes.

With a roll call vote of all ayes and no nays, the motion carried and the August 10, 2021, minutes are approved.

The first petition before the Board: B-120-21 of Nick and Amy Georgitsis requesting Development Standard Variance to allow for a five-foot tall fence containing greater than 80% visibility on a double frontage lot (2 front yards) located at 410 Duneland Beach Drive.

Mr. and Mrs. Georgitsis approached the lecturn and explained the need for the variance, in that they had already purchased the fence when they bought the home in May and were unaware of the "double frontage" issue. Mrs. Georgitsis described the fence to the board and requested approval of their petition. Board Member Stransky commented that seeing the fence has helped her understand the request, along with the diagrams provided. Chairman Zimmer commented that Maywood is really more like an alley.

Chairman Zimmer call for the departmental reports.

1 Planning Director York read his report (H.I.) into the
2 record and recommended approval of the petition without
conditions.

3 Counsel Hale read his attorney report (H.I.) into the
4 record at the end enumerating for the board the choices they
have regarding the petition.

5 Chairman Zimmer calls for comments from the board.
6 Hearing none, the public comment portion of the meeting was
opened.

7 Hearing no public comments, the public portion of the
8 meeting was closed.

9 Board Member Norvell moved to accept the findings of
10 fact, the Planning Department's report, the information
provided by the Petitioners, and that the petition be
approved. Seconded by Board Member Janus.

11 Roll call vote was taken as follows:

12 AYES

NAYS

13 Karen Janus
14 Lester Norvell
15 Lawrence Zimmer
16 Fred Klinder
17 Kathryn Stransky

18 With a roll call vote of all ayes and no nays, the
19 Petition B-120-21 is granted and approved by the Board.

20 The next petition called: Petition B-121-21 of BCP
21 Development LP/Robert A. Behar, MD, MBA, requesting Special
22 Exception Use to allow for light retail auto-related use,
23 installation and sales of wheels and tires, in the former
24 Gordon Food Service building located at 5400 Franklin
25 Street.

26 Mr. Scott Robertson, who is with R&R Tires Express,
27 explained the business plan of tire and wheel alignment and
28 installation at 5400 Franklin Street. Board Member Stransky
29 asked Mr. Robertson to expound on the business and plan for
30 the building. There will not be roll-up garage doors in the
31 front of the building; they will be located in the back of
32 the building; there will be no car repairs, or wrecked cars
33 on the premises; no fluids - strictly tires installation and
34 alignment; the building will be painted with the company
35 colors, the south side block corner will be installed with

1 glass windows that conform to the code for glare; 6,000
2 square feet will be occupied for the business, and the
3 remainder will be used for storage of new tires, and used
4 tires; none of the tires will be stored outside of the
5 building. Mr. Robertson explained that this is a very
6 low-key business with much less traffic than what Gordon
7 Food Service experienced in this location. This company is
8 a national franchise company; tires and wheels is all they
9 do. A brief discussion was had regarding the building
10 design and the company's desire to work with the community
11 and be a good steward to the citizens that live here.

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1 Chairman Zimmer called for questions or comments from
2 the board; hearing none, the public portion of the meeting
3 was opened.

4 Zoom participant Tom Kulavik, remonstrated against the
5 granting of the petition, citing several other available
6 properties (Sears or Tire Barn buildings) that would be more
7 suitable, in his opinion, for this business, as well as the
8 fact that he feels the area is saturated with tire
9 businesses, Belle Tire and Tire Discount, another tire
10 business, right next door to Belle Tire. He also mentioned
11 the wetland adjacent to this building.

12 Chairman Zimmer thanked Mr. Kulavik for his comments,
13 and asked for more input from the public. Hearing none, the
14 public portion of the meeting was closed.

15 Board Member Klinder moved that Petition B-121-21 be
16 approved with the understanding that the Planning Department
17 Report and recommendations and the attorney's report be
18 included in the approval. Seconded by Board Member Janus.

19 A roll call vote was taken as follows:

20 AYES

21 NAYS

22 Karen Janus
23 Lester Norvell
24 Lawrence Zimmer
25 Fred Klinder
Kathryn Stransky

With a roll call vote of all ayes and no nays, the
Petition B-121-21 is granted and approved by the Board with
the conditions as set out in the Planning Department's
report.

The next petition called was: Petition B-122-21 of
Clarence Davis requesting Special Exception Use to allow for
used car sales in a B2 Zoning district located at 2001 East
Michigan Boulevard.

Counsel Hale advised the board that he has had
conversations with Petitioner Davis and that there is a
missing notification to an adjacent property owner and that
due to that fact the board is not free to consider this
matter this evening, and that the board continue this matter
to their next regularly scheduled meeting.

1 AYES

NAYS

2 Karen Janus
Lester Norvell
3 Lawrence Zimmer
Fred Klinder
4 Kathryn Stransky

5 With a roll call vote of all ayes and no nays, the
Findings and order for Petition B-117-21 are approved.

6

7 NEXT FINDINGS and ORDER on the agenda:

8 B-118-21 of Theola Wright, 1324 West 8th Street.
Counsel Hale read the Findings and Order for B-118-21 into
9 the record (H.I.) and requested a motion for approval.

10 Board Member Norvell moved to approve the document as
read into the record by Counsel Hale. Seconded by Board
11 Member Klinder.

12 A roll call vote was taken as follows:

13 AYES

NAYS

14 Karen Janus
Lester Norvell
15 Lawrence Zimmer
Fred Klinder
16 Kathryn Stransky

17 With a roll call vote of all ayes and no nays, the
Findings and Order for Petition B-118-21 are approved.

18

19 NEXT FINDINGS and ORDER on the agenda:

20 B-119-21 of Paul E. Taylor/Taylor Design Architects, 108
California Avenue.

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22 Counsel Hale read the Findings and Order for B-119-21
into the record (H.I.) and requested a motion for approval.

23 Board Member Norvell moved to approve the document as
read into the record by Counsel Hale. Seconded by Board
24 Member Klinder.

25 A roll call vote was taken as follows:

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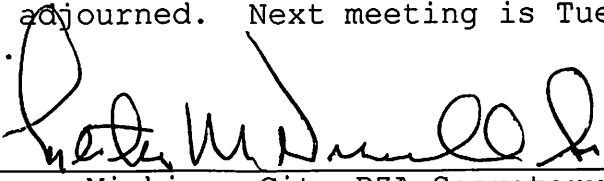
Karen Janus
Lester Norvell
Lawrence Zimmer
Fred Klinder
Kathryn Stransky

With a roll call vote of all ayes and no nays, the Findings and Order for Petition B-119-21 are approved.

Chairman Zimmer called for the next item on the agenda, which is New Business.

Skyler York announced that a new planner will start working with him starting this coming Monday, and that the new planner will be taking over the Board of Zoning Appeals meetings, and will be writing reports under Skyler's tutelage. Board Members asked who the new planner will be, and Skyler responded "Aaron Bohnggrabber" (phonetic). Board members quizzed Skyler about what the new planner would be doing, and Skyler answered questions.

There being no further business to come before the board, the meeting adjourned. Next meeting is Tuesday, November 9th, 2021.


Michigan City BZA Secretary
Lester Norvell
Vice-President

**REPORT ON THE PETITION FOR
B-120-21, 410 Duneland Beach Drive**

WATER DEPARTMENT: R.E. Russell, Superintendent, has no objections.

SANITATION DEPARTMENT: Arber Himaj, Engineer with the Sanitary District, has no objections

FIRE DEPARTMENT: Jeff Bruder, Fire Marshall, the Fire Department does not have any objections

PLANNING DEPARTMENT: The petitioner is requesting a Development Standard Variance to allow construction of a 5’ fence with greater than 80% visibility on a double frontage lot (2 front yards).

Zoning Ordinance Requirements

The subject property is zoned R1D, Single Family Residential District

Required	Requested	Comments
ZO 16.05 (b) (1) Fences and walls located within the front yard shall not exceed three and one-half feet in height and shall not be in excess of 49 percent solid or opaque.	Construction of a 5’ fence.	Petitioner is situated on a double frontage lot.

The standards for a development standard variance are found in the zoning code in [16.05(b)(1)] and are set out below in italics with the department’s proposed findings.

- 1. The approval will not be injurious to the public health, safety, morals, and general welfare of the community because of the following:*

PROPOSED FINDING: The approval **will not** be injurious to the public health, safety, morals, and general welfare of the community. Petitioner is requesting to place the fence 16’ from the road behind the tree line as well as the fence having greater than 80% visibility. The property in question is not on a corner lot and the proposed fence will not have an impact on vehicular or pedestrian visibility

- 2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner.*

PROPOSED FINDING: The use and value of the area adjacent to the property **will not** be affected in a substantially adverse manner. The fence will add value to the property and will not impact the light, view, air, or sight line from adjacent property owners.

3. *The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the property. Practical difficulties shall result from exceptional or extraordinary circumstances or conditions applying to the property that do not apply generally to other properties in the same zoning district. The variance shall be necessary for the preservation and enjoyment of a substantial property right similar to that possessed by other property owners in the same zoning district.*

PROPOSED FINDING: The strict application of the terms of the zoning ordinance **will** result in practical difficulties in the use of the property. The allowance of this fence will ensure that the petitioner is able to secure their property along the road as well as any pet on premises.

Recommendation

PROPOSED FINDING:

The Department recommends approval of the requested development standard variance for a 5' high fence to encroach into the rear, docket no. B-120-21 with no condition of approval.

Attorney Report

Petition No.: B-120-21

Petitioners: Nick & Amy Georgitsis

Owners: Nick & Amy Georgitsis

Request: Development Standards Variance

Location: 410 Duneland Beach Drive, Michigan City, Indiana

The record includes:

1. The materials submitted by the Petitioners, including:
 - (a) Petition for Development Standards Variance.
 - (b) Petitioner's proposed Development Standards Variance Preliminary Finding & Order.
 - (c) Hand-drawn map.
 - (d) Manufacturer's specs and description of the type and size of fencing.
 - (e) Two (2) photographs of similar fencing.
 - (f) Acknowledgement of Public Hearing Notice Requirements.
 - (g) Hand-drawn Map of Neighboring adjoining/abutting Property Owners with names and addresses.
 - (h) Notice of Public Hearing.
 - (i) Affidavit of Service.
 - (j) Mailing notice documentation (white mailing receipts and green card receipts).
2. Planning Department Report.
3. This Report.
4. Materials and testimony that may be presented at the public hearing to be held on October 12, 2021.

The Property is located in R1C Single Family Residential District. Petitioners are requesting Development Standards Variance too allow a 5' high fence; Section 1605(b) of our Zoning Ordinance prohibits fences in a front yard greater than 3½ feet high. Petitioner's property is a double frontage lot, which means there are "front yard" requirements on two sides of the home. The proposed fence will be located in a yard that is used as a traditional back or rear yard, but which fronts upon a street.

The appropriate standards to be considered by the BZA for the proposed Development Standards Variance are found at Section 28.11(b) of the zoning ordinance and in the Planning Department Report, namely:

- (a) The approval will or will not be injurious to the public health, safety, morals, and general welfare of the community.
- (b) The use and value of the area adjacent to the property will or will not be affected in a substantially adverse manner.
- (c) The strict application of the terms of the Zoning Ordinance will or will not result in practical difficulties in the use of the property. Practical difficulties shall result from exceptional or extraordinary circumstances or conditions applying to the property that do not apply generally to other properties in the same zoning district. The variance shall be necessary for the preservation and enjoyment of a substantial property right similar to that possessed by other property owners in the same district.

The BZA may, under Section 28.05(b):

- 1. grant the request; or,
- 2. partially grant the request, or grant it with limitations which MUST be included in the motion; or,
- 3. grant the request, but subject to certain conditions which MUST be included in the motion; or,
- 4. deny the request; or,
- 5. table the request until a future meeting.

Respectfully submitted,



Steven A. Hale

**REPORT ON THE PETITION OF
B-121-21, BCP Development, 5400 Franklin Street**

WATER DEPARTMENT: Chris Johnsen, Superintendent, has no objections.

SANITATION DEPARTMENT: Steve Stanford, Operations Manager, had no objections.

FIRE DEPARTMENT: Fire Marshall, Rob Schaffer, has no objections

PLANNING DEPARTMENT: The petitioner is requesting a special exception use to allow a former grocery store to be converted into Wheel and Tire retailer and installer.

Zoning Ordinance Requirements

The subject property is zoned B2, General Commercial

Required	Proposed	Comments
ZO 07.02 General Commercial B2 Minor automobile service and repair is granted by Special Exception Use in the B2 Zoning District	The petitioner proposes to convert an existing former grocer into a new use of a wheel and tire retailer and installer.	This location is in a large multi-unit building with parking in the front and rear. The new owner has been told they cannot install roll up doors on the front facade of the building.

Proposed Findings for the Special Use Exception

The standards for the special exception use have been set out below in italics [24.05] with the planning department's findings provided below.

- 1. General Welfare. The proposal will not be injurious to the public health, safety, and general welfare of the community.*
PROPOSED FINDING: This proposed use will not be injurious to the surrounding community, public health, safety, or general welfare. This use is similar to other uses in the immediate vicinity.
- 2. Surrounding Property. The special exception 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. The establishment of the special exception use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.*
PROPOSED FINDING: Granting the special exception will not harm or diminish the use of the surrounding or adjacent properties or commercial tenants. The new tenant will make installations in the rear of the building where new roll up doors will be placed. Other uses in this building are take out and retail uses that have regular turnover in parking.
- 3. Hazard. The special exception shall not be hazardous to adjacent property, or involve uses, activities, materials or equipment which will be detrimental to the health, safety or welfare of persons or property through the excessive production of traffic, noise, smoke, odor, fumes or glare.*
PROPOSED FINDING: There are no hazards associated with granting this special exception use. The adjacent uses are retail and takeout in use and have constant turnover in parking. The proposed use should be no heavier than the commercial grocery store use that existing before.

4. **Public Facilities and Services.** *The use will be served adequately by essential public facilities and services such as: highways, streets, police and fire protection, drainage structures, water and sewage facilities, refuse disposal and schools. Adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets.*
PROPOSED FINDING: This parcel has all the necessary public facilities directly adjacent or already existing at this location. All other essential public facilities are adequate for this location.

5. **Development Requirements.** *The development of the property will be consistent with the intent of the development requirements established by this ordinance for similar uses. The development will be designed, constructed, operated and maintained to be compatible with, and not significantly alter, the existing or intended character of the general vicinity, based upon the County Comprehensive Land Development Plan.*
PROPOSED FINDING: This development is consistent with the intent of the County Comprehensive Land Development Plan and Michigan City 2040 Comprehensive Plan.

6. **Ordinance Intent.** *Granting the special exception use will not be contrary to the general purposes served by this ordinance, and will not permanently injure other property or uses in the same zoning district and vicinity.*
PROPOSED FINDING: Approval of this special exception use will not permanently alter the pattern of development found in this area. Given the nature of the adjacent uses parking should be able to be shared and the installation will be happening in another location of the lot at the rear of the building. This should not permanently injure the other properties or adjacent uses.

7. **County Land Development Plan.** *The proposed use will be consistent with the character of the zoning district in which it is located and the recommendations of the County Land Development Plan.*
PROPOSED FINDING: The requested special exception use will be consistent with the character and intent of the underlying zoning district and County Land Development Plan.

8. **Use Regulations.** *Where there are use-specific regulations contained in Article 14, the special exception use shall comply with all of the regulations applicable to the use.*

Section 14.05 - Motor Vehicle Dealers and Service

The following requirements shall be complied with for the specified use:

(a) Vehicle Service and Repair, Major and Minor.

- (1) All repair work shall be conducted completely within an enclosed building.
- (2) Storage of wrecked, partially dismantled, or other derelict vehicles is prohibited, unless such storage is required under police or court order. Vehicles awaiting repair shall not be stored outdoors for more than seven days and shall be screened with an eight foot high screen wall in accordance with Section 17.03.
- (3) There shall be no outdoor storage or display of vehicle components and parts, supplies, or equipment or other merchandise, except within an area defined on the site plan which extends no more than ten feet beyond the building.

Recommendation

The Department would recommend approval of the proposed special exception use B-121-21 subject to the following conditions:

1. There shall be no overhead or rollup doors placed on the front façade of the building facing Franklin Street/US 421.
2. There shall be no outdoor display or merchandise except as provide in 14.05 (3) and shall not occupy more than two parking spaces in front of the façade.

Attorney Report

Petition No.: B-121-21
Petitioner: BCP Development LP/Robert A. Behar, MD MBA
Owner: GFS Merger I LLC
Request: Special Exception Use
Location: 5400 Franklin Street, Michigan City, Indiana

The record includes:

1. Material submitted by Petitioner, including:
 - (a) Petition for Special Exception Use.
 - (b) Petitioner's proposed Special Exception Use Preliminary Finding & Order.
 - (c) Acknowledgement of Public Hearing Notice Requirements (unsigned) and dated 8/9/21 and a second signed and dated 9/26/21.
 - (d) Map of neighboring property with adjoining/abutting Property Owners names and addresses and location noted (2 pages).
 - (e) ALTA/NSPS Land Title Survey dated June 25, 2021 prepared by Civil & Environmental Consultants, Inc. (2 pages).
 - (f) White mailing receipts, addressed and postmarked 9/27/21.
 - (g) Copy of Notice of Public Hearing.
 - (h) Affidavit of Service.
 - (i) Small copy of map of surrounding property with name, address and location of adjoining property owners.
2. Planning Department Report.
3. This Report.

4. Materials and testimony presented at the public hearing held October 12, 2021.

Petitioner is requesting approval for minor auto repair services including the sale and installation of wheels and tires in a B2 General Commercial District.

Minor automobile service and repair is a Special Exception Use in a B2 zoning district, with use requirements as set out in Section 14.05(a) of our zoning ordinance. A copy of Section 14.05(a) of our zoning ordinance is attached hereto for convenience.

The appropriate standards to be considered by the BZA for the proposed Special Exception Use are found at Article 24, Section 24.05 of our zoning ordinance and in the Planning Department report, namely that this Board find the following to be true:

- (a) The proposal will not be injurious to the public health, safety, and general welfare of the community.
- (b) The proposal will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purpose already permitted, will not substantially diminish or impair property values within the neighborhood, and will not impede the normal and orderly development and improvement of the surrounding property for permitted uses.
- (c) The proposal will not be hazardous to adjacent property, or involve uses, activities, materials or equipment which will be detrimental to the health, safety or welfare of persons or property.
- (d) The proposal will be served adequately by essential public facilities and services such as: highways, streets, police and fire protection, drainage structures, water and sewage facilities, refuse disposal and schools; and adequate measures have been, or will be, taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets.
- (e) The proposal will be consistent with the intent of the development requirements established by the zoning ordinance for similar uses; and the development will be designed, constructed, operated and maintained to be compatible with, and not significantly alter, the existing or intended character of the general vicinity, based upon the Comprehensive Land Development Plan.

- (f) The proposal will not be contrary to the general purposes served by the zoning ordinance; and will not permanently injure other property or uses in the same zoning district and vicinity.
- (g) The proposal will be consistent with the character of the zoning district in which it is located and the recommendations of the County Land Development Plan.
- (h) The special exception use shall comply with all of the regulations application to the use as set out in Article 14, and specifically the requirements of Section 14.05(a) of our zoning ordinance, which requirements are applicable.

The BZA may, under Section 28.05(b) of the zoning ordinance:

1. Approve the request if findings are made consistent with the requirements of Section 24.05; or,
2. Approve the request, with the findings consistent with Section 24.05 but subject to certain conditions which MUST be included in the motion; or,
3. deny the request; or,
4. continue the hearing until a future meeting upon an appropriate request or to obtain additional information.

Respectfully submitted,



Steven A. Hale