

WHITLEY COUNTY BOARD OF ZONING APPEALS

STAFF REPORT

19-W-VAR-19 DEVELOPMENT STANDARDS VARIANCE

Micropulse, Inc.

5865 E. SR 14

OCTOBER 22, 2019

AGENDA ITEM: 4

**SUMMARY OF PROPOSAL**

Current zoning: IPM, Industrial Park/Manufacturing

Property area: 20.3± acres

The petitioner is requesting a development standards variance to modify and relocate the required buffering landscaping for their IPM-zoned property located at 5865 East State Road 14. The property has frontage on both SR 14 and 600 East.

Micropulse, Inc. has been in operation on the subject property for many years, but recently the petitioner acquired additional property from the adjacent landowners (Brian & Sonya Emerick, principals in the petitioner Micropulse, Inc.), combined it with the existing parcel, and rezoned the overall parcel to IPM.

Per Section 5.6 of the zoning code, the following buffer yard standards apply when an IPM-zoned district is adjacent to an AG, RR, LR, VC, or GC district:

1. The owner of the subject property is responsible for installing the buffer yard.
2. The adjacent property owner shall not have to participate in installing the buffer yard.
3. An additional 10' of setback is required in addition to the normal setback on the yard(s) abutting the other zoning district.
4. One deciduous canopy tree planted a minimum of every 30', or coniferous tree every 20'.
5. All trees must be planted within 5 to 15 feet from the property line and on the subject property.
6. All trees must have at least a 1 ½" caliper, be properly maintained, and be replaced if the tree dies, is diseased, or is damaged.

By Staff's measurement, the overall perimeter of the IPM-zoned area is approximately 5,000' (less the driveway width). Since the entirety of the parcel is surrounded by AG or GC districts, the entire perimeter could be subject to the buffer yard requirement. If so, roughly 167 deciduous or 250 conifers would be required to be installed along the entire perimeter.

As mentioned above, the Emericks own four of the eight abutting and adjacent AG-zoned properties, including a field that straddles the IPM/AG zoning district line. Additionally, an Emerick family member lives in another of the adjacent AG-zoned properties. An existing GC-zoned business is also an abutting property.

Per the submitted landscaping plan, the petitioner is requesting a reduction in the total number of trees by not installing trees along the property frontages abutting properties owned by the Emericks or the existing business. Instead, trees would be installed along the frontages abutting nearby residential properties, which would put most of the trees off of the subject property. Trees are also requested to be absent from the 600 East frontage due to power lines and a legal drain easement that parallel the west side of the road.

Thus, the requested variances are of points 4 and 5 of the list above, and possibly #2.

## **REVIEW CRITERIA**

Indiana Code §36-7-4-918.5 and Section 10.10 of the Zoning Code state the criteria listed below upon which the Board must base its review. Staff's comments/proposed findings of fact under each criterion.

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

The requested variance will not be injurious to the public health, safety, or morals, as landscaping does not generally have such impacts. The general welfare may be injured if there is not a specific practical difficulty that arises specific to this property.

**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**

The proposed location of the buffer removes it from the middle of a field that straddles the AG-IPM zoning district and places it along the property line of adjacent residences. This configuration is intended to better buffer those residences from views of the industrial facility than if the buffer were installed per the code specification. So, the use and value of these residential may be enhanced over what might be expected with a letter-of-the-code installation.

The proposed absence of buffer trees along the frontages of property owned by Emericks would not have any adverse effect on the use of the adjacent properties, and any effect on the value could be seen as a self-imposed condition that is acceptable to the Emericks. Similarly, the effect on the adjacent commercial property could be seen as unsubstantial if the property owner agrees to the arrangement.

The proposed absence of buffer trees along the 600 East frontage, where the IPM district abuts an AG-zoned field, would also not have an adverse effect on the usage of the property. Any impact on the value of the property would likely not be substantial while the property is used for agriculture. The value of the property for other uses in the future may be affected by the absence of the aesthetic buffer; however, the 600'+ distance between the industrial building and the road frontage and the time period to when the property might be developed likely mitigates any effect to the point of not being substantial. Similarly, large distances also exist between the industrial building and residences to the west and north, across the Emericks' land previously discussed.

**3. The strict application of the terms of the Ordinance will result in practical difficulties in the use of the property. This situation shall not be self-imposed, nor be based on a perceived reduction or restriction of economic gain.**

The code provides a buffer between differently-zoned properties. For most cases, where the zoning district, property line, and limits of development coincide, this standard yields a buffer along the edge of development and adjacent to differing uses. In this case, there is a farmed field that crosses both the zoning boundary and property line. Placement of a buffer through the middle of this field would create a practical difficulty by no longer allowing efficient agricultural operations.

Further, the placement of the buffer on adjacent property, whose owners consent, may have been contemplated by standard #2, in that the language of the text states, "the adjacent property owner shall not *have to* participate in installing the buffer yard." Such wording seems to leave open the opportunity for an adjacent owner to voluntarily participate if they desire to do so; however, standard #5 explicitly states that the buffer must be on the IPM-zoned property only.

Similarly, if the adjacent landowner desires to waive the buffer requirement for some reason, for example if they have plans to extend the IPM zoning district to their own property in the foreseeable future, requiring a landscaped buffer along the current zoning district line could create unnecessary buffers.

Installation of trees in the specified location along 600 East is prevented by the legal drain easement. Placement of trees outside of the 75' easement would require a variance, but still would create a practical difficulty for the current agricultural usage of that portion of the property by taking approximately an acre of land out of production.

**SUGGESTED CONDITIONS**

If the Board moves to grant the variance, the following are suggested conditions of the approval:

1. Hazen Properties, LLC, owner of 5978 S. 600E, and Kenneth and Barbara Emerick, owners of 5901 E. SR 14, provide for the record a statement waiving the required buffering along their frontages with the petitioner's property.
2. The requirements of points 4 and 5 above apply to where a landscape buffer is proposed.

Date report prepared: 10/16/19

**BOARD OF ZONING APPEALS ACTION**

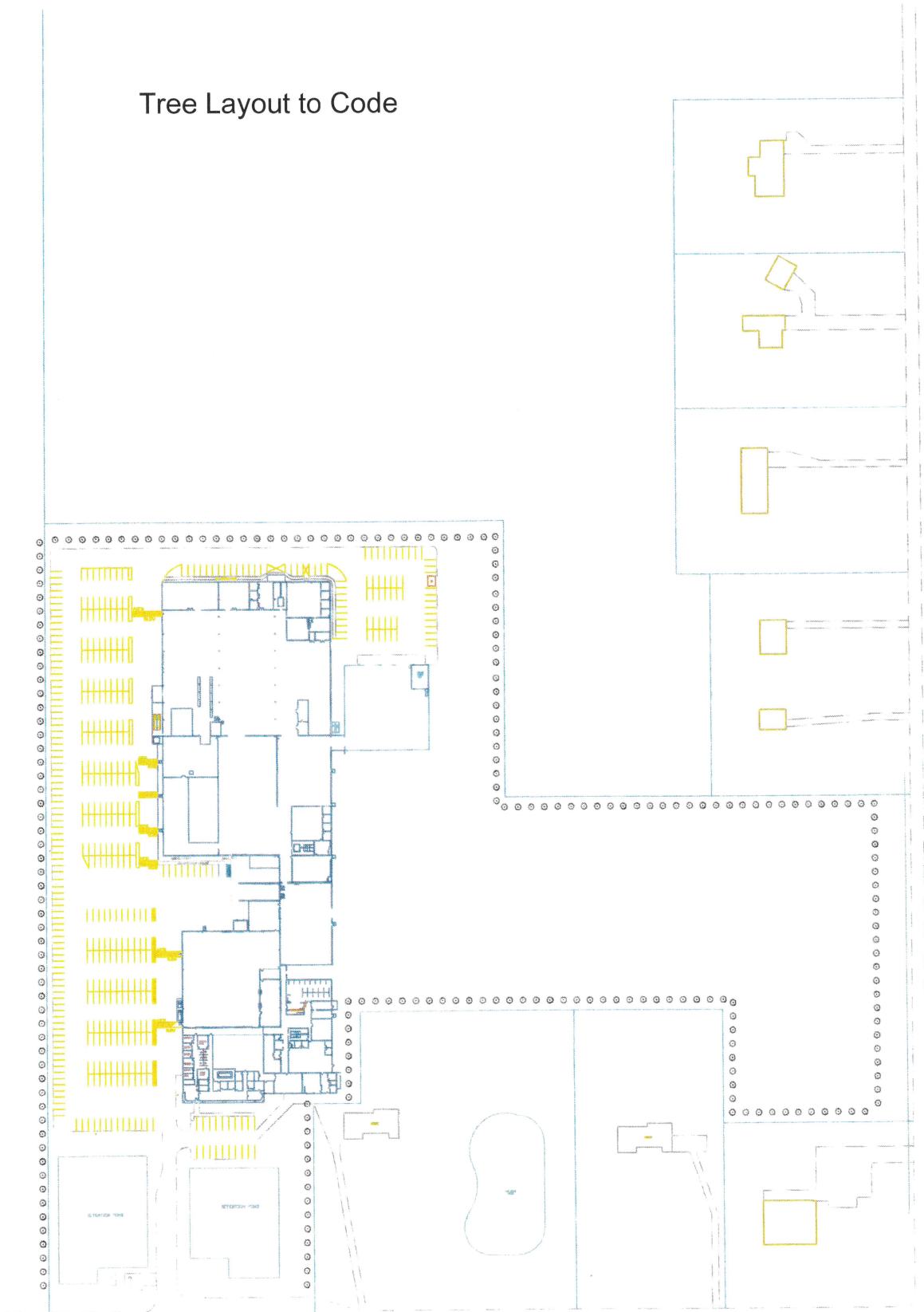
Findings of Fact Criteria

	<b>Deckard</b>		<b>Denihan</b>		<b>Lopez</b>		<b>Wilkinson</b>		<b>Wright</b>	
	<i>Yes</i>	<i>No</i>	<i>Yes</i>	<i>No</i>	<i>Yes</i>	<i>No</i>	<i>Yes</i>	<i>No</i>	<i>Yes</i>	<i>No</i>
<i>Criterion 1</i>										
<i>Criterion 2</i>										
<i>Criterion 3</i>										

Motion: \_\_\_\_\_ By: \_\_\_\_\_ Second by: \_\_\_\_\_

	<b>Deckard</b>	<b>Denihan</b>	<b>Lopez</b>	<b>Wilkinson</b>	<b>Wright</b>
<i>Yes</i>					
<i>No</i>					
<i>Abstain</i>					

# Tree Layout to Code



600 East

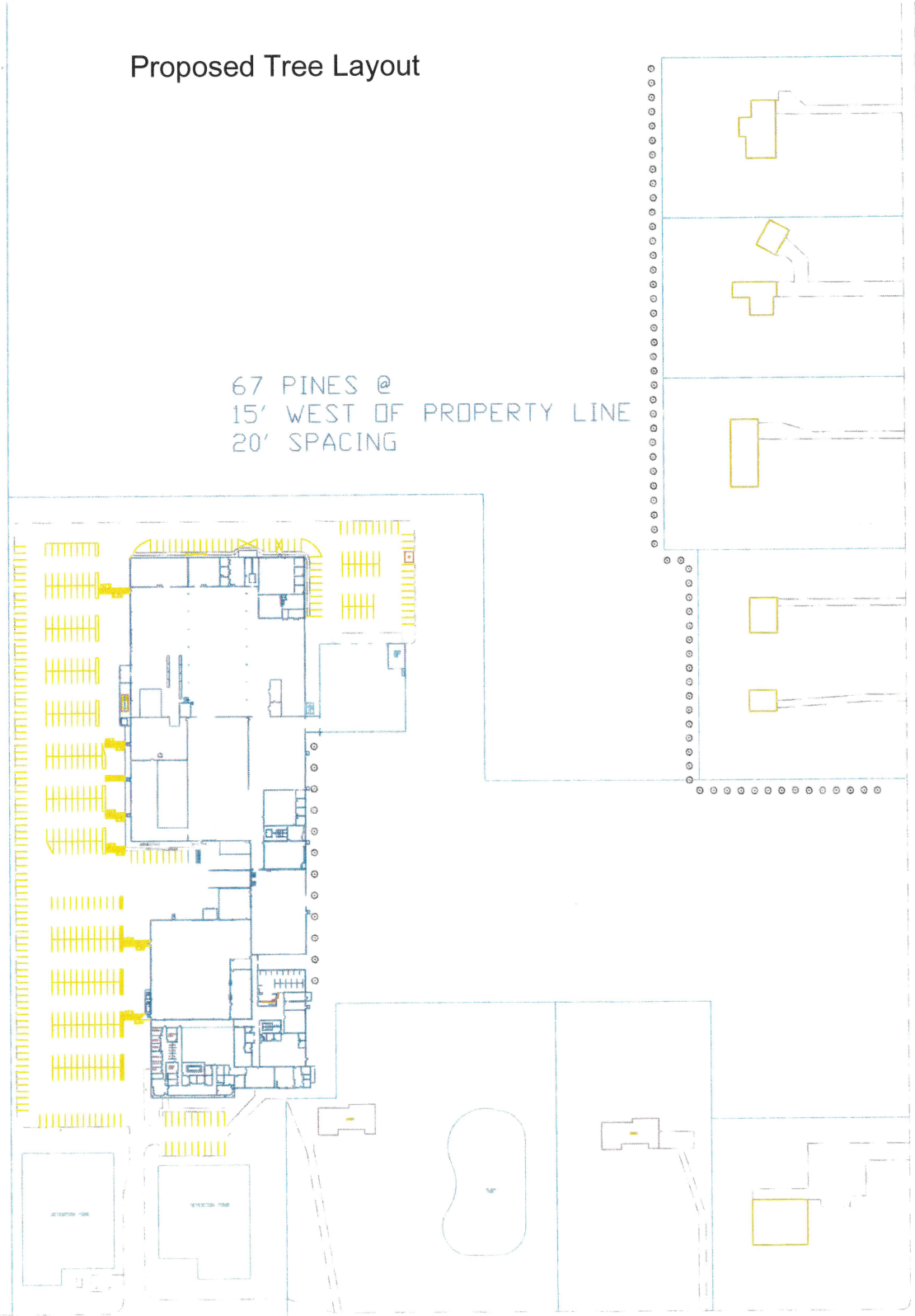
State Road 14

MICROPULSE, INC.

1" = 100'
1" = 200'
1" = 300'
1" = 400'
1" = 500'

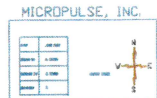
# Proposed Tree Layout

67 PINES @  
15' WEST OF PROPERTY LINE  
20' SPACING



600 East

State Road 14





Hinen, Michael A & Sally A



Hinen, Michael A & Sally A

Emerick, Brian G & Emerick Sonya M

Emerick, Brian G & Sonya M

Bechtold, Melvin E & Doris J

Zoda, Joseph W

Zoda, Joseph W & Maryna O

Travelbee, Stuart W & Roxane L

Smock, Phil & Elaine

Byall, Ned S & Delores J

5637

Davies, LuAnn

ESR 14

5888

5920

5901

6041

6110

5978

Hazen Properties LLC

Emerick, Kenneth E & Barbara L

Emerick, Brian G & Sonya M

S 600 E

Micropulse, Inc

Emerick, Brian G & Emerick Sonya M

Emerick, Brian G & Emerick Sonya M

Evilsizer, William & Ann

Bull, Larry R & Carol L

Davis, Donald D & Roberta A

Davis, Thomas Jr & Bonnie

Mannes, Stefan

5625

K & Robert L  
Trahin, Cindy

5680

5730

5800

5840

N