

**DELAWARE-MUNCIE METROPOLITAN BOARD OF ZONING APPEALS
FEBRUARY - 2023 REGULAR MONTHLY MEETING
AGENDA**

DATE: February 23, 2023

PLACE: Commissioners Court Room
3rd Floor, Delaware County
Building

TIME: 6:00 P.M.

PLEDGE OF ALLEGIANCE:

ROLL CALL:

Jim Fowler

**Ellen Brannon
Delaney Fritch
Mike Jones**

**Sue Kaiser
Leslie Mathewson
Allen Wiseley**

MINUTES: Consideration of the January, 2023 regular monthly meeting minutes.

NEW BUSINESS:

BZA 58-22 Jurisdiction: Board of Zoning Appeals

Being a public hearing on the matter of an application filed by **Arthur and Nicole Johnson Living Trust**, 1721 North Walnut Street, Muncie, Indiana, requesting variances from the terms of the City of Muncie Comprehensive Zoning Ordinance to allow decreased lot areas, a decreased rear setback and decreased parking for a property split through re-platting on premises located at 822 West Howard Street and 436 South Proud Street, Muncie, Indiana, as more accurately described in the application.

BZA 08-23 Jurisdiction: Board of Zoning Appeals

Being a public hearing on the matter of an application filed by **Coleman J. Noel Living Trust and IBYH, LLC**, 228 East 12th Street, Anderson, Indiana, requesting a variance from the terms of the City of Muncie Comprehensive Zoning Ordinance to allow off-site parking for a renovation of 5 dwelling units on premises located at 713 West Adams Street, Muncie, Indiana, as more accurately described in the application.

BZA 09-23 Jurisdiction: Board of Zoning Appeals

Being a public hearing on the matter of an application filed by **Laura Caudill and Chumley's Garage, LLC**, 2611 North Wheeling Avenue, Muncie, Indiana, requesting a variance of use from the terms of the City of Muncie Comprehensive Zoning Ordinance to allow business parking in a residence zone on premises located west of and adjacent to 2611 North Wheeling Avenue, Muncie, Indiana, as more accurately described in the application.

ADJOURNMENT:

**DELAWARE-MUNCIE METROPOLITAN BOARD OF ZONING APPEALS
FEBRUARY - 2023 REGULAR MONTHLY MEETING
MINUTES**

The Delaware-Muncie Metropolitan Board of Zoning (BZA) held its regular monthly meeting on Thursday, February 23, 2023 at 6:00 P.M., in the Commissioner's Court Room of the Delaware County Building, Muncie, Indiana. Chairman James Fowler called the meeting to order.

PLEDGE OF ALLEGIANCE:

INTRODUCTION:

Mr. Daniel stated that the Plan Commission had appointed an attorney, Brandon Murphy, and welcomed him to the meeting.

ROLL CALL:

Mr. Daniel called roll and the following members were present: Ms. Brannon, Mr. Fowler, Ms. Fritch, Mr. Jones, Ms. Kaiser, Ms. Mathewson, and Mr. Wiseley. Absent: None. Also present, Mr. Murphy, attorney for the board.

MINUTES:

Mr. Jones made a motion to approve the January 2023 regular monthly meeting minutes. Mr. Wiseley seconded the motion. Voting in favor: Ms. Brannon, Mr. Fowler, Ms. Fritch, Mr. Jones, Ms. Kaiser, Ms. Mathewson, and Mr. Wiseley. Voting against: None. Motion approved, January 2023 minutes approved.

NEW BUSINESS:

BZA 58-22 Jurisdiction: Board of Zoning Appeals

Being a public hearing on the matter of an application filed by **Arthur and Nicole Johnson Living Trust**, 1721 North Walnut Street, Muncie, Indiana, requesting variances from the terms of the City of Muncie Comprehensive Zoning Ordinance to allow decreased lot areas, a decreased rear setback and decreased parking for a property split through re-platting on premises located at 822 West Howard Street and 436 South Proud Street, Muncie, Indiana, as more accurately described in the application.

Kathy Vannice, Ashton Land Surveyor, 325 W. Washington St., Muncie, Indiana, appeared to represent the applicant. She stated that the new owner intended to remodel the homes and would need a loan, but that lenders do not like to see 2 homes on one parcel. She stated that they would split the property through re-platting, and that they would need the variances for the parking, lot size, and setbacks in order to do that.

Mr. Fowler asked how the parking spaces would work for 822 W. Howard Street.

Ms. Vannice stated that the intention was to pull in to the space and upon exiting they would travel to the north, then east to the alley and come back south to make it a continual drive. She stated that they also intended to make an easement across the parcel on the west to the parcel on the east to provide a travel lane to the alley.

Mr. Fowler asked if they would enter the 8' driveway from Howard Street and make a loop around to exit.

Ms. Vannice stated yes, it was the only way they could find to provide any parking since there was not enough land.

Mr. Jones asked if the home at 436 S. Howard Street was unoccupied at the moment.

Ms. Vannice stated yes, that the owner wanted to remodel both homes first.

Ms. Fritch asked how much land would be left for greenspace for the residence since there was not enough room for the parking, and the majority of the yard space on Howard Street and Proud Street would be turned into parking.

Ms. Vannice stated that currently the house on Howard Street had gravel and not much yard, and that there was no more room for recreational space. She stated that the parcel on Proud Street had a bit of a hill, and that would be the only place for greenspace.

Ms. Fritch asked if anyone from the neighborhood had been consulted about eliminating a large portion of recreational area for parking.

Ms. Vannice stated no.

Ms. Fritch stated that this property was in the Old West End Neighborhood and asked if the Historic Preservation Office had been consulted about these changes.

Ms. Vannice stated no.

Walter Poe, 2100 S. Jefferson St., Muncie, Indiana, appeared. He stated that he was a contractor for Mr. Johnson, and that he had some concerns about the number of cars currently parked on the property since no one was living there. He stated that many of the cars were not running, and that once there were people living in the 4 units at Proud Street it would be a problem.

Mr. Fowler stated that they may be abandoned vehicles, and asked if he had any other concerns.

Mr. Poe stated that he saw the notice on the property about the meeting and thought that he should come to the meeting, and that the Property Management company never mentioned that parking spaces were being created.

Mr. Fowler stated that Ms. Vannice was here to represent the client.

Ms. Vannice showed Mr. Poe a site plan of the parking spaces that were being added.

No one appeared in opposition.

Mr. Wiseley made a motion to approve BZA 58-22 the appeal of Arthur and Nicole Johnson Living Trust with the hardships as stated in the application with the understanding that the re-platting will be completed and recorded. Ms. Mathewson seconded the motion. Voting in favor: Ms. Brannon, Mr. Fowler, Ms. Kaiser, Ms. Mathewson, and Mr. Wiseley. Voting against: Ms. Fritch and Mr. Jones. Motion carried, BZA 58-22 approved.

Mr. Daniel mentioned to Mr. Poe that he could contact the City Building Commissioner, who was charged with code enforcement, and that would include the removal of abandoned cars on the street, so he might want to contact their office.

BZA 08-23 Jurisdiction: Board of Zoning Appeals

Being a public hearing on the matter of an application filed by **Coleman J. Noel Living Trust and IBYH, LLC**, 228 East 12th Street, Anderson, Indiana, requesting a variance from the terms of the City of Muncie Comprehensive Zoning Ordinance to allow off-site parking for a renovation of 5 dwelling units on premises located at 713 West Adams Street, Muncie, Indiana, as more accurately described in the application.

Jason Squillante, IBYH, LLC, 228 E. 12th St., Anderson, Indiana, appeared, to represent the applicant. He stated that they wanted to use the adjoining lot to the east of 713 W. Adams Street for parking for those units. He stated that it would control the parking and keep it off of the street, and would be well maintained.

Mr. Fowler asked if they had talked to the City Engineer about how the ingress and egress and curb cuts would work on the property.

Mr. Squillante stated that he had, and that they were the one to recommend he file for variances. He stated that this will allow them to renovate a complex that was going to be demoed, and in doing this, would provide a solution for another structure to the east that would otherwise need to be demoed as well.

Mr. Fowler asked if they would also need to obtain a drainage permit since they were turning grassy area into a graveled area.

Mr. Wiseley stated that it appeared that the area was already graveled.

Mr. Squillante stated that there was a lead-off that was designed for drainage and that they had worked with the city to be sure that it drained properly.

Mr. Daniel stated that he believed that the applicant had permits for all of those items.

Mr. Squillante stated they did, and that they had passed all of their inspections.

Mr. Wiseley asked if due to the existing fence, would the access be from the alley.

Mr. Fowler stated that the variance was just the last step they needed before they could get all of the permits for the renovations itself.

Mr. Squillante stated yes, and that everyone had been kind in helping them, and that it was their mistake in not realizing this should have been taken care of sooner.

Mr. Jones asked if this would be a long-term parking solution.

Mr. Squillante stated yes, it was leased for 30 years with renewable options after that time.

Ms. Fritch asked if the parking lot would serve the units to the east and west of it.

Mr. Squillante stated that it currently serves the unit at 713 W. Adams Street, and that they were currently working with the city for 703 W. Adams Street also, and this could be a solution for parking for that unit as well.

Mr. Wiseley asked if the applicant would need to ask for a variance for off site parking for the other property.

Mr. Daniel stated yes.

Mr. Squillante stated that for now they were just asking for the parking for 713 W. Adams Street, since they were not very far into the discussions yet for 703 W. Adams Street.

Mr. Fowler stated that if it was an additional parcel it would be permitted through a lease agreement as well.

Mr. Squillante stated that the lease agreement did allow them complete control over the utilization of the lot.

Mr. Fowler stated that having that lease agreement on file would be one of the conditions of that variance,

Mr. Squillante stated that they had filed that 3-4 weeks ago.

Ms. Mathewson stated that the lease agreement had been included in the applicant's packet.

Mr. Wiseley stated that it had been recorded as well.

No one appeared in opposition.

Mr. Wiseley made a motion to approve BZA 08-23 the appeal of Coleman J. Noel Living Trust and IBYJH, LLC with the hardship as stated in the application. Mr. Jones seconded the motion. Voting in favor: Ms. Brannon, Mr. Fowler, Ms. Fritch, Mr. Jones, Ms. Kaiser, Ms. Mathewson, and Mr. Wiseley. Voting against: None. Motion carried, BZA 08-23 approved.

BZA 09-23 Jurisdiction: Board of Zoning Appeals

Being a public hearing on the matter of an application filed by **Laura Caudill and Chumley's Garage, LLC**, 2611 North Wheeling Avenue, Muncie, Indiana, requesting a variance of use from the terms of the City of Muncie Comprehensive Zoning Ordinance to allow business parking in a residence zone on premises located west of and adjacent to 2611 North Wheeling Avenue, Muncie, Indiana, as more accurately described in the application.

Kathy Vannice, Ashton Land Surveyor, 325 W Washington St., Muncie, Indiana, appeared to represent the applicant. She stated that Chumley's Garage had been having break-ins during the night where the catalytic convertors were being stolen from the vehicles that were here for repairs. She stated that the property was unique in the fact the New York Avenue used to have a guardrail, but had been damaged due to an accident and not replaced. She stated that it had overgrown brush there, and people were now walking along this area and accessing his property. She stated that this parcel was zoned residential but that lots 1-4 to the north and in the same subdivision were zoned Community Business. She stated that he planned to fence in the property to make it as secure as possible to safely store the vehicle in his care overnight and protect them from damage. She stated that the garage had a small parcel, and that he had approached both businesses to his north and south about allowing him to park on their property. She stated that Pizza Hut to the south would not allow it and there had been an old agreement with the property owner to the north to park 1-2 vehicles, but it had not been written as overnight parking. She stated that there would be no way to secure vehicles on another property and his goal was to purchase and secure this parcel and protect his customers vehicles.

Mr. Fowler asked how many vehicles they may want to park on this small lot that is in a residence zone.

Ms. Vannice stated that it would only be the over-flow that would not fit in the building at night so maybe only 3-5 vehicle.

Mr. Fowler asked if the only purpose would be for that overnight storage and no work would be happening on this property.

Ms. Vannice stated yes.

Mr. Jones asked who currently owned the parcel.

Ms. Vannice stated that Laura Caudill was the current property owner.

Ms. Fritch asked if Ms. Caudill owned any of the neighboring properties as well.

Ms. Vannice stated that she also owned Lot 102.

Mr. Fowler asked how they would get around the plat restriction that states no business activity would take place on this property.

Ms. Vannice stated that part of that was the precedence that had been set where Lots 1-4 in the same subdivision were zoned commercially.

Mr. Jones asked if the sale of the property was contingent on the variance being approved.

Ms. Vannice stated yes, and that if he purchased it he would combine it with his business property.

Mr. Wiseley stated that in order to combine them he would need to rezone that parcel, so if that needed to be done anyway what was the point of requesting the variance of use.

Ms. Vannice stated that she believed she had to start with the variance.

Mr. Wiseley stated he did not think that was so.

Mr. Daniel stated that the difference would be the development standards since this was located on a corridor, and those standards would have to be met if it was a commercially zoned property. He stated that the variance of use did not automatically kick in those standards such as buffering, but that the board could place those as conditions. He stated that was the major difference in a variance of use and a use by right because of the zoning.

Mr. Wiseley stated that made it even more of a reason to go to the rezoning since the point of those corridor standards was to use them, otherwise this was just a run around unless placed as a condition.

Mr. Fowler stated that the main issue was the buffering between the residential and the commercial uses and that the development standards require that buffer area.

Ms. Vannice stated that the parcel was not big enough and hopefully the fencing would be enough of a solid screening.

Mr. Fowler suggested that they plant some trees on the residential side around the fence.

Ms. Vannice stated they would, but that there was not enough room for the required corridor standards to be met.

Mr. Fowler stated that the size of the parcel was a reason to go this route first.

Ms. Vannice stated they just did not have enough room for all the required plantings. She stated that the applicant tried to work something out with Pizza Hut, but they did not want to sell any part of their property or allow them to park overnight in their parking lot.

Mr. Fowler stated that a condition should be placed regarding the type of fencing material to be used, he did not want to see chain link or barbed wire but rather something nice and that plantings on the residential side would also help with the overall look.

Ms. Vannice stated that chain link fencing would probably not stop someone who was cutting car parts from getting on to the property.

Ms. Mathewson asked about lighting for the area.

Ms. Vannice stated that they had talked about putting lighting on the back of the garage, but they do not want to blind the neighborhood by shining the light that direction.

Ms. Mathewson stated that was her concern.

Ms. Vannice stated that there were standards for how bright the lighting could be and how far the light can extend.

Mr. Jones asked if this portion of New York Avenue had been vacated, and asked how it was being used.

Ms. Vannice stated that it had not been vacated and that the houses on the west do use this as access to their properties up to the dead end.

Mr. Fowler stated that those houses have their drives from New York Avenue.

Derek Black, Chumley's Garage, 2611 N. Wheeling Ave., Muncie, Indiana, appeared. He stated that as for the lighting, they would not add any more in that area since it was mostly brush and would not be appealing to look at. He stated that the fence idea was the plastic PVC since it was low maintenance, would not rot, and no one could get through to the property. He stated that they do a lot of work for the police, fire departments and EMS and would like to make room for 3-4 more vehicles.

Mr. Jones asked if this was the only area he intended to secure.

Mr. Black stated yes. He stated that there was a fence behind PPG currently and that they would connect with the fence so that everything was enclosed. He stated that New York Avenue was a dead end street and that the parking lot would not interfere with those residents driveways. He stated that he had met with Ms. Moody prior to her passing and explained how in one night he had 5 catalytic convertors stolen and that comes from his pocket not his insurance. He stated that he knows this won't guarantee the theft will stop but he wanted to make it not so easy and that he was willing to do what the board wanted to make it more appealing to the neighborhood.

Ms. Brannon stated that the idea of planting trees on the residential side of the fence would be aesthetically pleasing and serve as an additional barrier for thieves. She asked if Mr. Black if he had any outside security cameras.

Mr. Black stated that he had 16 of them.

Ms. Brannon asked if Mid-West was connected to his business.

Mr. Black stated that Mid-West was his business.

Ronda Moreno, 2601 N. New York Av., Muncie, Indiana, appeared in opposition. She stated that she was not necessarily for or against, she just had a few concerns since she lived on the dead end. She stated that she does not want anyone to have theft and was in support of anything that could help prevent that. She stated that the conversation had been about the look of the property to the north and west, and stated that anyone could get through from New York Avenue since there was only a low to the ground guardrail as a barrier. She stated that the homeowner at the end of the road had cleared out a lot of the brush, and the fact that it was so open from the street to Mr. Black's property causes problems for the homeowner's now. She stated that there was a sign at the corner indicating this was a dead end road, but of course that doesn't stop people and then they turn around in our front yards. She stated that from the corner it looks like a car can drive through and that she thinks this was how a wreck happened not too long ago. She stated that the lighting was also a concern because Mr. Black needs it for safety but that the residents do not want to have it shining in their windows.

Mr. Fowler stated that she should reach out to the city about installing a full guardrail that was bright yellow and at least 3' high.

Ms. Moreno stated that there was a full guardrail but that it was not yellow or very tall and needed to be more substantial to detour people from thinking that they can get through.

Ms. Black stated that he was going to enclose the entire area with fence and that there would be no open area at New York Avenue. He stated that the wreck that had been mentioned was a DUI and that the person never saw the guardrail.

Mr. Jones asked for clarification that the entire area would be enclosed.

Mr. Black stated yes, that it would not do any good to only secure a portion of the area if someone could still walk onto the property.

Mr. Wiseley asked about the Subdivision Ordinance not allowing the creation of additional lots in a subdivision.

Mr. Daniel stated that the Subdivision Ordinance prohibits the creation of an additional lot in an area that had been platted. He stated that this subject area was not big enough to be a standalone parcel and would need a variance for lot size and dimension not to mention it was landlocked. He stated that there had been no discussion of it remaining its own parcel, but combining it would require a rezoning as Mr. Wiseley mentioned earlier.

Mr. Fowler asked if combining it with his property would take care of the zoning issue.

Mr. Daniel stated no, that he would need to go through the rezoning process to have the parcel rezoned and then he could combine the two.

Mr. Wiseley stated that it can't be combined without the rezoning and he can't create it separately either based on the language of the ordinance.

Mr. Daniel stated correct, if left alone it would be an illegal parcel if not joined to something.

Mr. Fowler asked if this needed to occur before anything else could take place.

Mr. Wiseley stated that he thought the rezoning would be first.

Ms. Vannice stated that if they received the variance they would then have the ability to go for the rezoning and that a special use would make it fall under the corridor standards and that there was not enough room on the parcel to do that. She stated that if granted the variance they would then address the rezoning in order to combine it and make it one parcel.

Mr. Fowler asked about the plat restrictions mentioned that would make this an illegal parcel.

Mr. Wiseley stated that was in the Subdivision Ordinance.

Ms. Vannice stated that she could not complete the division without the rezoning because a surveyor cannot make a piece of land that becomes land locked without jeopardizing their license and that her career and license was more important than any piece of land. She stated that the chain of events they were going through would be a variance of use, rezoning the small piece, and then combine the two properties.

Mr. Jones asked if there was a possibility to have this request contingent on the zoning being approved.

Mr. Fowler stated that rezoning the small parcel would have to be a stipulation of the variance.

Mr. Fowler stated that it should include combining it with the property at 2611 N. Wheeling Avenue.

Mr. Wiseley stated that ultimately the only difference was that it allowed them to get around the corridor development standards.

Mr. Fowler stated yes, which this parcel would not be able to meet otherwise.

Ms. Vannice stated that even if it had road frontage, it would not meet any of the setbacks to be built on.

Mr. Jones made a motion to approve BZA 09-23 the appeal of Laura Caudill and Chumley's Garage, LLC with the hardships as stated in the application with the following conditions: 1) That the subject area be rezoned to BV Variety Business Zone; 2) That the area be enclosed with opaque fencing and with plantings, including tress, on the side facing residential use; 3) That the subject area be joined with the parcel at 2611 N Wheeling Ave., and 4) That the area will be used for vehicle storage only. Ms. Mathewson seconded the motion. Voting in favor: Ms. Brannon, Mr. Fowler, Ms. Fritch, Mr. Jones, Ms. Kaiser, and Ms. Mathewson. Voting against: Mr. Wiseley. Motion carried, BZA 09-23 approved.

REPORT FROM STAFF:

Mr. Daniel stated that there had been discussion with the Board's attorney, Mr. Murphy that in the absence of a Director there were documents that need to be signed for the BZA. He stated that Mr. Murphy had recommended a motion to amend the rules of procedure be written that would allow the Board to temporarily appoint someone to do so until that position was filled.

Mr. Murphy stated that a motion to amend the rules would be needed, and if passed the Board would need to name someone to fulfill those responsibilities within the office to continue to operate business in the absence of the Executive Director.

Mr. Fowler asked if the Board would vote on the amendment and then need to name someone tonight to fill that role.

Mr. Murphy stated that he would anticipate if the Board were to approve this particular motion and then a second motion would follow to name someone in that capacity.

Mr. Wiseley made a motion to supplement the rules of procedure to establish an acting secretary for the Delaware-Muncie Metropolitan Board of Zoning Appeals. Mr. Jones seconded the motion. Voting in favor: Ms. Brannon, Mr. Fowler, Ms. Fritch, Mr. Jones, Ms. Kaiser, Ms. Mathewson, and Mr. Wiseley. Voting against: None. Motion carried, BZA Rules of Procedure amendment regarding acting secretary approved.

Mr. Wiseley made a motion to appoint Mr. Daniel as acting secretary. Ms. Mathewson seconded the motion. Voting in favor: Ms. Brannon, Mr. Fowler, Ms. Fritch, Mr. Jones,

Ms. Kaiser, Ms. Mathewson, and Mr. Wiseley. Voting against: None. Motion carried, Mr. Daniel will serve as the Acting Secretary for the BZA.

Mr. Fowler asked what could be done about all of the empty, damaged, and outdated billboards around town.

Mr. Daniel stated that the ordinance charges the Zoning Administrator with enforcement duties and that an abandoned billboard, which could include no sign face or a sign in disrepair, had 30 days to come into compliance or can be ordered removed.

Mr. Fowler asked if no sign face had a time limit to be repaired.

Mr. Murphy asked if the time limit was after notice.

Mr. Daniel stated that no notice can be sent until the condition had been that way for at least 30 days, and then there was no specific amount of time they need to be given to fix the condition.

Mr. Fowler stated that there was so much that Ms. Moody did for the county and for the City of Muncie to get the corridor standards adopted and get billboards cleaned up and for ground signs to replace all of the pole signs. He stated that he knew it was not without a lot of fight to get those things adopted, but that she did a phenomenal job to help improve the look of the county.

ADJOURNMENT:

James Fowler, Chairman

Fred Daniel, BZA Planner